

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1079

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

ORIGINAL

DOCKET NUMBER 77-1079

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

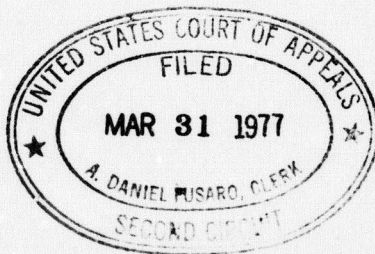
v.

OTTO SCHMANSKI and PETER
DI GIOVANNI,

Defendants-Appellants.

On appeal from the United States District Court
for the Eastern District of New York

APPELLANTS' APPENDIX



MARKEWICH, ROSENHAUS, MARKEWICH
& FRIEDMAN, P.C.
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PAGINATION AS IN ORIGINAL COPY

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BEST COPY AVAILABLE

DOCKET ENTRIES OF OTTO SCHMANSKI

A-1

76CR 530

OTTO SCHMANSKI

Case Filed Mo. 8 Day 19	WEINSTEIN, J
No. of Chgs. 2	76 530
JUVENILE	U.S. MAG. CASE NO. 76 M 992

18:371,2115 & 2

ORIGINAL COUNTS
Did break into a U.S. Post Office 2
with intent to commit larceny, etc.

CLOSED

SUPERSEEDING
COUNTS

KEY DATES & INTERVALS

ARREST

8-19-76

8/24/76

TRIAL

11-22-76

11-22-76

SENTENCE

1.21.77

5-24-76

MAGISTRATE

5-24-76 VAC/070A

Burglary of US Post Office. T-18 USC Section 2115

ATTORNEYS

Lee Adlerstein

Joseph Panzer, Esq. (Ret) Sturin & Nizin
305 Broadway Markewich 125-10 Queens Blvd.
New York Rosenhaus View Gardens NY
250-5 Ave NYC 732-4992 263-2411

DI GIOVANNI 2

- 8-19-76 Before Pratt, J - Indictment filed
8/25/76 Notice of Readiness for trial filed.
8/24/76 Before PRATT, J.- Case called. Deft & Counsel presen
Deft arraigned & enters a plea of not guilty on his own
behalf. Deft waived his rights to a speedy trial. Bail contd.
Adj'd without date before Judge Weinstein.
8/24/76 Notice of appearance filed.
10-12-76 Before WEINSTEIN, J.- Case called-Deft and counsel present-Pre-trial
conference held and concluded-Case adj'd to 10-20-76 at 10:00 AM for
disposition.

8/24/76 G

11/22/76

Docket Entries of Otto Schmanski

A-2

- 10-20-76 Before Weinstein, J.- Case Called. Deft & Counsel Present. Pre Trial Conference held and concluded. Trial set for 11-22-76 at 9:30 A.M.
- 11-19-76 Before Weinstein, J.- Case Called. Deft. & Counsel present. Status Report held and concluded. Trial set for 11-22-76 at 9:30 A.M.
- 11-22-76 Before Weinstein, J.- Case Called. Deft. & Counsel present. Trial ordered and begun. Jurors were selected and sworn. Motions to dismiss the indictment is denied. Govt. rests. Deft rests. Mr. Weinbach sums up for govt. Deft. sums up. Mr. Weinbach sums up in rebuttal. Court charges jury - Marshals sworn - Alternates discharged - Jury retires for deliberation - Jury returns and renders a verdict of guilty as to counts one and two. Jury polled and discharged. Deft's motion to set aside the verdict is denied. Bail continued Trial concluded.
- 1-14-77 Stenographers transcript filed dated 11-22-76
- 1.21.77 Before Weinstein, J.- Case Called. Deft. & Counsel present. Deft. sentenced to five (5) years imprisonment on each of counts one and two to run consecutive for a total of ten (10) years. Stay of execution of sentence is granted to 2-22-77 pending appeal.
- 1.21.77 Judgment and Commitment filed. Certified Copies to Marshal and Probation.
- 1.28.77 Notice of Appeal filed.
- 1.28.77 Certified Copies of Docket entries and duplicate copy of Notice of Appeal mailed to the Court of Appeals.
- 1-31-77 Letter filed received from Chambers dated 1-28-77 from counsel for deft ~~Allan Sturim~~ Markewich, Rosenhaus & Friedman, Esqs. (in place of Sturim & Nizin)
- 2-4-77 By Weinstein J - Order filed for substitution of attorney for the deft (Markewich Rosenhaus Markewich & Friedman in place of Allan Sturim)
- 2-23-77 Scheduling order filed received from the court of appeals that the record on appeal be docketed on or before 3-2-77

DOCKET ENTRIES OF PETER DI GIOVANNI

CRIMINAL DOCKET - U.S. District Court		76CR 530		Case No. 8 19 76 530 2	
PO ☐	JUDGE/MAGISTRATE Assigned U.S.	PETER DIGIOVANNI		U.S. MAG. CASE NO. 76 M 992	
MO ☐	0715	(LAST, FIRST, MIDDLE)		BAIL - RELEASE	
NR Mls ☐	207 1			☐ AMT ☐ Fugitive ☐ Denied ☐ Set ☒ Pers. Recog. ☐ PSA \$ 1,000 conditions ☐ 10% Deposit ☐ Surety Bond ☐ Collateral ☐ Bail Not Made ☐ Status Changed (See Docket) ☐ 3rd Ptry Cust Other	
U.S. TITLE/SECTION	18:371,2115 & 2	OFFENSES CHARGED	Did break into a U.S. Post Office with intent to commit larceny, etc. 2		
II. KEY DATES & INTERVALS ARREST or U.S. Custody Began: 5-24-76 5:00AM Summons Served: _____ First Appearance: _____ INDICTMENT ☒ Information: 8-19-76 High Risk Case: _____ Indict. Waived: _____ In Charging District: _____ SUPERSADING COUNTS: _____ ARRAIGNMENT: 8/24/76 1st Ples: 11 Final Ples: _____ TRIAL: Trial Set For: 11/22/76 Trial Begun: 11-22-76 Trial Ended: 11-22-76 Verdict: _____ Disposition of Charges: _____ Convicted: _____ Acquired: _____ Dismissed: _____ On All Charges: _____ On Lesser Offense(s): _____ WOP: _____ WP: _____ On Government Motion: _____					
Search Warrant: Issued _____ Return _____ Summons: Issued _____ Served _____ Arrest Warrant Issued: _____ COMPLAINT: _____ OFFENSE (In Complaint): _____		MAGISTRATE INITIAL APPEARANCE DATE: _____ PRELIMINARY EXAMINATION OR REMOVAL HEARING: _____ ☒ WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT Tape Number: _____ OUTCOME: ☒ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW: _____			
5-2-4-76 VAC/070A		Burglary of U.S. Post Office. T-18 USC Section 2115.			
U.S. Attorney or Asst.		ATTORNEYS			
Lee Adlerstein		Defense: ☒ CJ ☐ Ret. ☐ Waived ☐ Self ☐ None / Other: ☐ PD ☐ CO Allen Sturim, Esq. - 105 Broadway 125-10 Queens Blvd. New York NY 962-2243			

* Show last name and suffix numbers of other defendants on same indictment information

SCHMANSKI 1

DATE (DOCUMENT NO.) PROCEEDINGS

8-19-76 Before Pratt, J - Indictment filed

8/25/76 Notice of Readiness for trial filed.

8/24/76 Before PRATT, J. - Case called. Deft & Counsel present. Deft arraigned & enters a plea of not guilty on his own behalf. Deft waived his rights to a speedy trial. Bail contd. Adjd without date before Judge Weinstein.

8/24/76 G

Docket Entries of Peter Di Giovanni

A-4

DOCUMENT NO.	Subst	Ent Date	Code	Use
	(3)	(b)	(c)	(d)
8/24/76				
Notice of appearance filed.				
10-12-76				
Before WEINSTEIN, J.-Case called-Deft and counsel present-Pre-trial conference held and concluded-Case adjd to 10-20-76 at 10:30 AM for disposition.				
10-20-76				
Before Weinstein, J.- Case Called. Deft & Counsel Present. Pre Trial Conference held and concluded. Trial set for 11-22-76 at 9:30 A.M.				
11-19-76				
Before Weinstein, J.- Case Called. Deft. & Counsel present. Status Report held and concluded. Trial set for 11-22-76 at 9:30 A.M.				
11-22-76				
Before Weinstein, J.- Case Called. Deft. & Counsel present. Trial ordered and begun. Jurors were selected and sworn. Motions to dismiss the indictment is denied. Govt. rests. Deft rests. Deft. sums up. Govt. sums up. Mr. Weinbach sums up in rebuttal. Court charges jury - Marshals sworn - Alternates discharged - Jury retires for deliberation - Jury returns and renders a verdict of guilty as to counts one and two. Jury polled and discharged. Deft's motion to set aside the verdict is denied. Ball continued. Trial concluded.				
1-14-77				
Stenographers transcript filed dated 11-22-76				
2-4-77				
Before Weinstein:J- case called - deft & counsel Herbert Handman present - deft sentenced to imprisonment for 2 years on each of counts 1 and 2 to run concurrently- Stay of execution of sentence is granted pending appeal.				
2-4-77				
Judgment & commitment filed - certified copies to Marshal.				
2-4-77				
By Weinstein J - Consent to change atty filed (Herbert Handman, Esq. in place as counsel for the deft instead of H.Panzer)				
2/11/77				
Notice of Appeal filed.				
2/11/77b				
Docket entries and duplicate of Notice of Appeal mailed to the C of A.				
2-23-77				
Scheduling order filed received from the court of appeals that the record on appeal be docketed on or before 3-2-77				
3/1/77				
Record on appeal certified and mailed to the C of A.				
3-24-77				
Transcript filed dated Nov. 19, 1976				

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

-against-

OTTO SCHMANSKI and
PETER DI GIOVANNI,

Defendants.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 22nd day of May 1976, within the Eastern District of New York, the defendants OTTO SCHMANSKI and PETER DI GIOVANNI did knowingly, unlawfully and forcibly break into the United States Post Office branch at Eltingville, 4455 Amboy Road, Staten Island, New York, with intent to commit in such post office branch a larceny or other depredation. (Title 18, United States Code, Sections 2115 and 2).

COUNT TWO

On or about the 22nd day of May 1976, within the Eastern District of New York, the defendants OTTO SCHMANSKI and PETER DI GIOVANNI, together with another person, unknown to the Grand Jury, did knowingly and unlawfully conspire to commit an offense against the United States by knowingly and unlawfully conspiring to forcibly

I N D I C T M E N T

Cr.No. _____
(T. 18, U.S.C. §§371,
2115, and 2)

760R 530

break into the United States Post Office branch at Eltingville, 4455 Amboy Road, Staten Island, New York, with intent to commit in such post office branch a larceny or other depredation in violation of Title 18, United States Code, Section 2115. (Title 18, United States Code, Section 371).

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the defendant OTTO SCHMANSKI committed the following:

OVERT ACT

1. On or about the 22nd day of May 1976, the defendant, OTTO SCHMANSKI, forcibly entered the Eltingville Postal Station.

A TRUE BILL

FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Indictment

A-7

Form DJ-195
(Ed. 2-7-66)

No. _____

UNITED STATES DISTRICT COURT
EASTERN District of NEW YORK
CRIMINAL Division

THE UNITED STATES OF AMERICA

vs.

OTTO SCHMANSKI and

PETER DI GIOVANNI, Defendants.

INDICTMENT

**T. 18, U.S.C. §§371, 2115,
and 2.**

I true bill,

Foreman.

Filed in open court this _____ day
of _____, A. D. 19____

Clerk.

Bail, \$_____

Elia Weinbach, AUSA
(212) 330-7054

GPO 902-482

**JUDGMENT AND COMMITMENT ORDER OF
OTTO SCHMANSKI**

United States District Court for

United States of America vs.

EASTERN DISTRICT OF NEW YORK

DEFENDANT

M'FILMED

OTTO SCHMANSKI

M'FILMED

DOCKET NO.

76 CR 530

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR

JANUARY 21st, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Allan Sturim, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY. in counts one (1) and two (2).

**FINDING &
JUDGMENT**

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C., Sections 2115, 371 and 2 in that on or about May 22, 1976, the defendant with another did knowingly and unlawfully conspire to commit an offense against the United States by knowingly and unlawfully conspiring to forcibly break into the United States Post Office branch at Eltingville with intent to commit in such post office branch a larceny or other depredation in violation of T-18, U.S.C., Section 2115.

**SENTENCE
OR
PROBATION
ORDER**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **five (5)** years on each of counts one (1) and two (2) to run consecutive for a total of ten (10) years. Stay of execution of sentence is granted to February twenty-second, 1977/or pending appeal.

**SPECIAL
CONDITIONS
OF
PROBATION**

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ JAN 21 1977 ★

TIME A.M.

P.M.

Judgment and Commitment Order of
Otto Schmanski

A-9

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

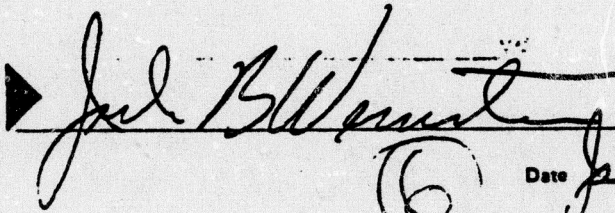
The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate


(6) Date January 21, 1977

**JUDGMENT AND COMMITMENT ORDER OF
PETER DI GIOVANNI**

United States of America vs.

United States District Court for

EASTERN DISTRICT OF NEW YORK

DEFENDANT

PETER DI GIOVANNI

DOCKET NO.

76 CR 530

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH	DAY	YEAR
2	4	1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

~~Joseph P. R...~~ Herbert L. Handman, Esq.
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTYFINDING &
JUDGMENT

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY. in counts one (1) and two (2)

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S.C., Sections 2115, 371 and 2 in that on or about May 22, 1976, the defendant with another did knowingly and unlawfully conspire to commit an offense against the United States by knowingly and unlawfully conspiring to forcibly break into the United States Post Office branch at Eltingville with intent to commit in such post office branch a larceny or other depredation in violation of T-18, U.S.C., Section 2115.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE
OR
PROBATION
ORDER

2 years on each of counts 1 and 2 to run
concurrent - stay of execution of sentence
is granted pending appeal.

SPECIAL
CONDITIONS
OF
PROBATION

FILED
IN CLERK'S OFFICE
J. S. DISTRICT COURT E.D. N.Y.

★ FEB 4 1977 ★

TIME A.M. _____
P.M. _____

Judgment and Commitment Order of
Peter Di Giovanni

A-11

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

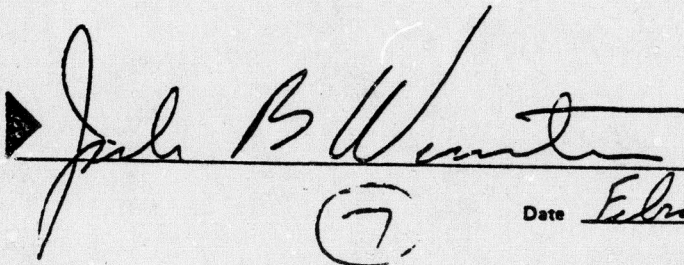
The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☐ U.S. District Judge

☐ U.S. Magistrate


(7)

Date February 3, 1977

3 1 THE CLERK: Criminal cause for sentence, U.S.A.
2 v. Otto Schmanski also known as Moe Polack.
3

4 THE COURT: Have you read the probation report?

5 MR. STURM: I have.

6 THE COURT: Have you discussed it with your
7 client?

8 MR. STURM: Yes.

9 THE COURT: Mr. Schmanski, you have a right to
10 appeal and if you cannot afford a lawyer the Court
11 will appoint one for you.

12 THE DEFENDANT: I understand.

13 THE COURT: Please explain his further rights
14 to him.

15 MR. STURM: I will.

16 Your Honor, I know there is a complete
17 probation report and the defendant's record is not
18 particularly pretty.

19 The positive part of the defendant's background
20 is that since 1962, after spending approximately 17
21 years of his life in jail, he was able to maintain
22 a history of steady employment as a stage hand at
23 the Coliseum in Manhattan.

24 He is married and the father of four children
25 all youngsters, the oldest 14 and the youngest 5.

He has a home in Long Island which he has

provided for his wife and the four children and they live together.

With any extended period of incarceration involved here I think it would probably be the loss of his home in Long Island and a tremendous traumatic experience for his family.

I am really cognizant of the fact that Mr. Schmanski himself is not worthy of special consideration but I ask the Court in recognition of the trauma to his family to take those factors into consideration in imposing sentence.

THE COURT: Do you wish to add anything?

THE DEFENDANT: I think my lawyer said it all, your Honor. I might make it worse.

THE COURT: The defendant is a confirmed criminal and a recidivist. He is making a good living and there is no excuse for this. He has a very bad record.

He is sentenced to five years on each count consecutively for a total of ten years in view of his record.

Anything further you wish to say?

THE DEFENDANT: Ten years?

THE COURT: Ten years, yes.

Breaking into a post office with your record

5 1 when you had a good job is without any basis for
2 any mercy.

3 MR. STURM: The only basis that I ask you to
4 consider is that absence from his family means it is
5 a virtually destroyed family unit.

6 THE COURT: There is nothing I can do about it.

7 The man had zero to thirty and to break into
8 a bank with a young man, particularly a man with a
9 good job --

10 MR. WEINEACH: Breaking into a post office.

11 THE COURT: Yes.

12 There was no contrition. There was no plea.
13 He had a full trial. I don't have to go through the
14 record. I am convinced based on the evidence that he
15 was responsible for masterminding the job and as a
16 result of this work a young man, his colleague, will
17 also go to jail. There was no cooperation. One of the
18 possible defendants escaped.

19 MR. WEINEACH: There were three.

20 The Government would have liked cooperation
21 but there was never a time when we had discussions
22 concerning cooperation.

23 THE COURT: There was a third person. Do you
24 know the name of the third person?

25 MR. WEINEACH: No.

6 1 THE COURT: They never got the name. There was
2 a full trial and he has been found guilty. I see no
3 reason for mercy.

4 MR. STURM: Can the defendant have thirty days?

5 THE COURT: He has the right to appeal. He has
6 that right.

7 MR. STURM: We discussed that and the last
8 indication is that he would not.

9 THE COURT: You may have a thirty day stay or
10 a stay for the purpose of appeal, whatever is latest.

11 THE DEFENDANT: What day do I surrender?

12 THE COURT: That would be when?

13 THE CLERK: The 21st of February, Monday.

14 MR. STURM: That's Washington's birthday.

15 MR. WEINBACH: If the notice of appeal is filed
16 the stay will continue until the appeal is heard,
17 I take it.

18 THE COURT: The 22nd, a Tuesday, the day after
19 Washington's birthday.

20 Good luck.

21 * * * * *

10

1

MR. WEINBACH: The Government calls Thomas Trabosci.

2

3

MR. PANZER: May I?

4

MR. STURIM: May I ask for a side bar before the witness takes the stand?

5

6

THE COURT: No.

7

MR. STURIM: I take exception.

8

THE CLERK: Step up, please. Raise your right hand.

9

10 T H O M A S T R A B O S C I , called as a
11 witness, having been first duly sworn by the Clerk
12 of the Court, testified as follows:

13

THE CLERK: State your full name, please.

14

THE WITNESS: Thomas T-r-a-b-o-s-c-i.

15

THE CLERK: Please have a seat.

16

MR. PANZER: Will your Honor exclude any other witnesses?

17

18

THE COURT: Yes.

19

Any other witnesses, please leave the courtroom.

20

21

MR. WEINBACH: Your Honor, there is a potential witness that may be but do not intend to call him.

22

23

24

THE COURT: If he is to be a witness, he has to leave.

25

2 DIRECT EXAMINATION

3 BY MR. WEINBACH:

4 Q Will you state your name and spell it for
5 the record?

6 A Thomas T-r-a-b-o-s-c-i.

7 Q By whom are you employed, Mr. Trabosci?

8 A United States Postal Service.

9 Q And in what station?

10 A Eltingville Station, Staten Island, New York.

11 Q Were you so employed on May 22, 1976?

12 A Yes.

13 MR. WEINBACH: Your Honor, I would ask the
14 Court to take judicial notice that May 22nd was a
15 Saturday.

16 THE COURT: Any objection?

17 MR. PANZER: No objection.

18 Q Mr. Trabosci, do you know who the last person
19 to leave the postal station was on May 22, 1976?

20 A Yes.

21 Q And who was that?

22 A Myself.

23 Q And --

24 MR. PANZER: Your Honor, I, at this time,
25 interrupt. I will concede the United States Postal

2

Station was in good order, that the walls were not
ripped away and no safe was broken into when Mr.

3

4

Trabosci left the post office.

5

THE COURT: What about your co-counsel?

6

MR. STURIM: I will so stipulate.

7

THE COURT: All right. Thank you.

8

BY MR. WEINBACH:

9

Q I am going to show you a series of photographs,

10

Mr. Trabosci, Government's Exhibit 18 in evidence;

11

Government's 17 in evidence; Government's 16 in evidence,

12

Government's 15 in evidence; Government's 14 in evidence;

13

Government's 13 in evidence; Government's 12 in evidence;

14

and Government's 11 in evidence.

15

MR. WEINBACH: Your Honor, in view of the

16

stipulation that was just reached, I would like to

17

offer these three additional photographs in

18

evidence. I will show them to counsel.

19

THE COURT: Are those the ones -- let me

20

see them --

21

No. Have the witness identify them.

22

Q Looking at the photographs that are before

23

you, Mr. Trabosci, do those photographs represent fair and

24

accurate descriptions of the exterior of the Eltingville

25

Postal Station?

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A Yes, they do.

Q Now, I'm going to show you what has been marked as Government's 31 and 30 for identification and ask you to tell the court and jury what those pictures show.

A This is the outside of the walk-in safe at the Eltingville Station with damage on the wall and the wire sticking out.

Q Now, on May 22, 1976, were you in that room at any time?

A Yes.

Q When you were in that room, did you happen to see the condition of that wall?

A Yes.

Q Was the condition of the wall the same as depicted in those pictures?

A No.

Q What were the business hours of the postal station on Saturday, May 22nd?

A Open to the public from 8:30 to 12:00 noon.

MR. WEINBACH: Your Honor, I ask that these three additional photographs be received subject to connection.

MR. PANZER: Your Honor, may we have a side bar -- subject to connection I won't object at

1
2 this time.

3 THE COURT: What is the connection? I don't
4 understand. Is that the way the premises were
5 when you left?

6 THE WITNESS: Those photos, no.

7 THE COURT: When did you see the premises
8 next?

9 THE WITNESS: Tuesday morning.

10 THE COURT: What was Monday?

11 THE WITNESS: My day off.

12 MR. WEINBACH: I will withdraw the offer.

13 THE COURT: Oh, all right.

14 MR. WEINBACH: May I pass these pictures
15 amongst the jury?

16 THE COURT: Yes.

17 MR. WEINBACH: I have no further questions
18 of this witness.

19 MR. PANZER: No questions.

20 THE COURT: Thank you.

21 Next witness.

22 MR. WEINBACH: The Government calls Sargeant
23 Edward McDermott.

24
25 (Continued on next page.)

THE CLERK: Please take the stand and raise your right hand.

EDWARD MC DERMOTT, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Please state your full name and spell your last name.

THE WITNESS: Edward M-c-D-e-r-m-o-t-t.

Q Sgt. McDermott, by whom are you employed?

A U.S. Postal Inspection Service.

Q In what capacity?

A Security supervisor.

Q And on May 22, 1976, were you working?

A Yes.

Q And where were you working?

A Brooklyn Postal Station at 14 Second Avenue, Brooklyn.

Q What were your duties and responsibilities there?

A Supervisor of the tour.

MR. PANZER: Your Honor, again I will concede that he received an alarm.

THE COURT: What about your co-counsel?

MR. STURIM: I will so stipulate.

MR. WEINBACH: Your Honor, I think I ought to be entitled to bring it out from the witness just so the jury can understand.

THE COURT: All right.

Q What time did you get to work on that evening?

A 10:00 p.m.

Q Shortly after you got to work, did there come an alarm into the postal station?

A Yes, approximately 10:30.

Q Where did that alarm originate from?

A Elzingville Station.

Q How do you know that?

A We have a phone system direct to the different post offices and an alarm system is hooked up to that.

Q Do you know approximately what time that alarm went off?

A Yes, to our records, at 10:30.

Q And do you know anything about the alarm system at the postal station?

A Yes.

Q Could you tell the members of the jury whether or not the alarm would have sounded in the postal station?

A No, it wouldn't.

MR. STURIM: I would object because it's

McDermott-direct

obviously without his knowledge.

MR. WEINBACH: I asked him if he knew.

MR. STURIM: He is going to be testifying that he obviously wasn't present, nor did he hear.

THE COURT: I know but he knows the system, if he does know it.

Q Do you know how the system works?

A Yes, I do.

Q Do you know whether or not the alarm would have sounded in the postal station itself?

MR. STURIM: Objection.

THE COURT: Overruled.

A No, it wouldn't have.

Q How would the alarm have registered?

A Over the telephone lines to our office.

Q Subsequent to the alarm going off, what, if anything, did you do?

A As soon as I was advised by desk man, I called two men, got the keys to the station and responded to the station.

Q Did there come a time when you got to the station?

A Yes.

Q And where did you go when you first got

there?

A I went to the office and they told me that they had two people in custody.

MR. STURIM: Objection.

THE COURT: Sustained.

Strike that.

Q Officer McDermott, did you go into the postal station?

A Yes.

Q Did you look around into the rooms?

MR. STURIM: I am going to object to leading of this witness.

THE COURT: Try not to lead.

Q Officer McDermott, when you got into the postal station, what, if anything, did you do?

A We checked for any points of entry. We also went through the galleries to see if there were any other persons in the building without police knowledge and checked the mail, the desk, the whole installation.

Q Did you check the doors?

A Yes.

Q Did you check the room where the safe was?

MR. STURIM: Objection. It's leading.

THE COURT: Well, let him exhaust his

recollection before you lead.

Q Officer McDermott, I'm going to show you what has been marked as 30, 31 and 32 for identification and ask you if you can identify those photographs?

A Yes, this is the partition which had the alarm secured to the back that when it was pulled away, ripped the wires and started the alarm system off.

Q Do each of those photographs fairly and accurately represent the scene as you saw it on the evening of May 22, 1976?

Q Yes, by the tape on there, the Scotch tape that I put on to set the alarm back in motion so it could be repaired.

Q I'm going to show you Government's Exhibit 28 for identification and ask you if you can identify that photograph?

A Yes. The reason it's so divided is the fact that we tried to resecure it in order to secure the post office.

Q What does the picture represent?

A This is a gallery, at least the gallery for inspection service surveillance.

Q I am going to show you Government's Exhibit 29 and ask if you can identify that photograph?

1
2 A Yes, this is a wire, cyclone fence that is
3 adjacent to that door.

4 Q Did you see that fence on the evening of
5 May 22nd?

6 A Yes.

7 Q Does that photograph fairly and accurately
8 represent the condition of that fence on that evening
9 when you saw it?

10 A Yes.

11 MR. WEINBACH: I ask that this be received.

12 MR. PANZER: I object, there is no connection
13 between these photographs and the defendant
14 DiGiovanni being established.

15 MR. STURIM: I join in that objection.

16 THE COURT: Overruled. You understand they
17 are establishing or trying to, that there was a
18 break-in. They also have to connect these defendants,
19 if they can.

20 Admitted.

21 THE CLERK: Government's Exhibit 30 for
22 identification in evidence; 32 for identification
23 in evidence; 31 for identification in evidence;
24 28 for identification in evidence; 29 for identifi-
25 cation in evidence.

(So marked)

BY MR. WEINBACH:

Q By the way, Officer McDermott, are you familiar with the alarm system at the Eltingville Station?

A Yes, I am.

Q Could you tell the members of the jury how it could be tripped off?

A This is a sensor system that the vault, the walls, the ceiling and the whole area is sensitized. Any drilling or hammering or vibration of that type, would set this alarm off; also if the wire that connects to that is bad, in order to jump it or to break it, would set the alarm off.

MR. WEINBACH: I have no further questions.

MR. PANZER: No questions.

MR. STURIM: No questions.

THE COURT: All right. Thank you.

(Continued on next page.)

MR. WEINBACH: The Government calls Officer Robert Seton-Harris.

THE CLERK: Raise your right hand, please.

ROBERT SETON - HARRIS , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: Please state your name and spell it for the record.

THE WITNESS: Police Officer Robert S-e-t-o-n H-a-r-r-i-s. Shield No. 1620, 122nd Precinct.

DIRECT EXAMINATION

BY MR. WEINBACH:

Q Officer Harris, by whom are you employed?

A City of New York Police Department.

Q And what precinct?

A 122nd Precinct, Staten Island.

Q Were you working on May 22, 1976?

A Yes, sir.

Q And what time were you working on that evening?

A Working the 4:00 to 12:00.

Q Did you have a partner?

A Yes, I did.

Q What was the name of your partner?

2

A Police Officer Leonard Ames, 123rd Precinct.

3

Q Were you working in a patrol car?

4

A Yes, sir.

5

6

Q I direct your attention to approximately 10:00 to 10:30 or thereabouts, did you receive a call?

7

A We did.

8

9

Q And as a result of that call, what, if anything, did you do?

10

11

A We proceeded to a location, 4455 Amboy Road, which is the United States Post Office.

12

13

Q And what, if anything, did you do when you first got there?

14

15

16

A The call we received was recorded; alarm. We alighted from the vehicle and then proceeded down the side of the building.

17

Q And Officer Ames was with you?

18

A He had gone to the front.

19

20

Q And where exactly did you go after you got out from the car?

21

22

Q I proceeded down the side of the building toward the side door of the post office.

23

24

Q Officer Harris, would a diagram of the postal station help you to explain to the jury your location?

25

Q Yes, sir, I think it would.

MR. WEINBACH: Mark this, please?

THE COURT: Would you care to examine the diagram?

MR. STURIM: We haven't seen it.

THE COURT: Mark it in evidence.

THE CLERK: Government's Exhibit 33 in evidence.

(So marked)

BY MR. WEINBACH:

Q Officer Seton-Harris, I would ask you to step down from the witness stand for a second. By the way, take a look at Government's Exhibit 33 in evidence and is that a fair and accurate representation of the area of Eltingville Station.

MR. PANZER: The United States Attorney is right in my line of vision.

A Yes, sir, that is.

Q Would you take the red marker that I am handing to you and mark the letter "C" where you parked your car?

(Witness indicating)

Q You then said you got out of your car and went to the side of the building, I believe?

A Yes.

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Q When you gotto the side of the building,
what, if anything, did you see?

A I was proceeding down this walkway when I
saw two figures emerge from this exit door, jump this fence
and head into the wooded area.

Q Would you mark an "S" where you first saw
these individuals?

(Witness indicating)

Q Approximately how far away from these two
individuals were you, if you recall?

A About 40 feet, I guess.

Q What, if anything, did you do as you saw
these two individuals?

A I proceeded to run to my right after these
two people.

Q And is that --

A Toward the wooded area.

Q Is there a fence between the postal station
and the wooded area?

A Yes.

Q You gave chase?

A I did.

Q Did you eventually catch one of the two men?

A Yes, I did.

1
2 Q Could you just mark an "S1" where you caught --
3 the approximate area where you caught this man?

4 A "S1"?

5 Q Yes.

6 (Witness indicating)

7 Q All right, and do you see the man you caught
8 that evening in the courtroom today?

9 A Yes.

10 Q Would you point him out, please?

11 A The gentleman there. Mr. Schmanski.

12 Q The far end of the table?

13 A Yes.

14 MR. WEINBACH: Let the record indicate that
15 the witness has pointed out the defendant Schmanski.

16 Q You may take the witness stand again.

17 Officer Seton-Harris, what, if anything,
18 did you do when you caught Mr. Schmanski?

19 A Well, we fell to the ground and I told him not
20 to move and I placed handcuffs on him.

21 Q Before you placed handcuffs on him, what, if
22 anything, occurred?

23 A He had a pair of gloves on; work type gloves.

24 Q I am going to show you what has been marked
25 Government's Exhibit 9 for identification and ask you if

1
2 those appear to be the type of gloves that Mr. Schmanski
3 was wearing?

4 A Yes, sir.

5 Q And did you remove those gloves from him?

6 A I can't say those gloves are the exact gloves.
7 The gloves of that type I did.

8 Q Did you remove the gloves from him?

9 A Yes, I did.

10 Q What, if anything, did you do with the gloves?

11 A Brought them back and eventually turned them
12 over to one of the postal inspectors at the 120th Precinct.

13 Q Would that be Postal Inspector James Cole?

14 A Yes.

15 MR. WEINBACH: Your Honor, I ask that these
16 gloves be received subject to connection. Well,
17 I would ask that they be received at this point.

18 THE COURT: No. Why don't you wait?

19 Q After you arrested Mr. Schmanski, what, if
20 anything, did you do?

21 A I was in voice contact with my partner and I
22 walked across the field to meet him and then the both of
23 us walked back to the car with Schmanski and the other
24 fellow, DiGiovanni.

25 Q Did Officer Ames make an arrest, to your

Seton-Harris - direct
knowledge, of another individual?

A Yes, he did.

Q Did you see that individual?

A Yes, I did.

Q Do you see him in here, this court?

A Yes, I do.

Q Who is that?

A The man seated at the table; Mr. DiGiovanni.

MR. WEINBACH: Let the record indicate that
Officer Harris has pointed out Mr. DiGiovanni.

Q Officer Seton-Harris, I am going to show you
Government's Exhibit 16 and ask you if that's the alleyway
that you saw these two gentlemen from?

A Yes, it is.

Q And take a look at Government's Exhibits 17,
18, 12, 11, 13 and 14 in evidence, and are those fair and
accurate pictures of the post office and views from it?

A Yes, sir, they are.

Q Now subsequent to the arrest of Mr. Schmanski
and Mr. DiGiovanni, did you have occasion to go into the
building to inspect the building?

A Yes, I did.

Q And where did you go?

A We went through the side door from which they

had previously emerged, and up to the front of the building.

Q Did you inspect the side door?

A Yes, I did.

Q Did you inspect the vault room?

A Yes, I did, yes.

Q Did you inspect the fence next to the side door?

A Yes.

Q Will you tell the members of the jury what you saw?

A The fence had been cut to allow somebody to get through the fence --

MR. STURIM: Objection and I ask that be stricken.

THE COURT: Denied.

A The fence had been cut and the side door had been jimmied. The door opened inward into the station. Went through the door and proceeded into the front part of the building where there is a large walk-in safe, which is closed and, if I recall, there was a piece of panel board that had been broken away at the lower part of the wall, right adjacent to the door of the safe.

Q I am now going to show you Government's Exhibit 9 in evidence, 28, 29, 32, 30 and 31 in evidence,

1
2 and ask you first of all, does Government's Exhibit 29
3 fairly depict the condition of the fence, the cyclone
4 fence?

5 A Yes, sir.

6 Q And Government's Exhibit 28, does that
7 fairly represent the condition of the door, the side door?

8 A Yes, it does.

9 Q And do Government's Exhibits 31, 30 and 32
10 fairly represent the condition of the vault room?

11 A Yes, sir.

12 Q Did you have occasion to see anything else
13 in the postal station that evening?

14 A When I went in there, there was a bag, canvas
15 bag. It was full of assorted tools.

16 Q I'm sorry, I missed the last word.

17 A Assorted tools.

18 Q Perhaps it would be easier if you stepped
19 down.

20 A Sure.

21 Q Now, Officer Seton-Harris, I'm going to show
22 you what has been marked as Government's Exhibit 22 for
23 identification, which appears to be a bag with a handle;
24 does this appear to be the kind of a bag you saw on that
25 evening?

1
2 A Yes, it does.

3 Q You said you saw some other tools that
4 evening. Do you remember the kinds of tools you saw?

5 A There was a large crowbar.

6 MR. WEINBACH: Could I have this marked, your
7 Honor?

8 THE COURT: Yes, mark the crowbar.

9 THE CLERK: Government's Exhibit 34 for
10 identification.

11 THE COURT: No, mark it in evidence.

12 Q Government's Exhibit 34 in evidence, does
13 that appear to be the kind of crowbar you saw?

14 A Yes.

15 Q What other kind of tools did you see?

16 MR. PANZER: Excuse me, that was not marked
17 in evidence.

18 THE COURT: Yes, it was.

19 MR. PANZER: I'd like to have a voir dire on
20 it.

21 MR. WEINBACH: It might be easier to go through
22 all of the exhibits rather than have a voir dire
23 on each and every exhibit.

24 THE COURT: One number assigned to the bag?

25 MR. WEINBACH: One number assigned to the bag

xxx

and another number to mark the items too loose to mark and there are others.

THE COURT: All right.

BY MR. WEINBACH:

Q Would you take a look at these exhibits, Government's Exhibit 23 for identification and tell us what it is?

A It's a wire cutter.

Q Did you see it that evening?

A I saw it at the 120th Precinct.

Q How about Government's Exhibit 26 for identification?

A Yes, I saw that, also.

Q What is it, for the record.

A It's a three pound hammer.

MR. STURIM: What did he identify that as?

MR. WEINBACH: Three pound hammer.

Q What is Government's Exhibit 21 for identification?

A A drill.

Q Did you see it on May 22nd?

A Yes.

Q How about Government's Exhibit 24 for identification, did you see it on May 22nd?

1
2 A Yes.

3 Q What is it, for the record?

4 A A hacksaw.

5 Q And how about Government's Exhibit 27 for
6 identification?

7 A Yes, I did.

8 Q What is it, for the record?

9 A A small pry-bar.

10 Q Government's Exhibit 25 consists of ten drill
11 bits, three screwdrivers, two flashlights, five punches,
12 two knives and four cold chisels.

13 Do you recognize them as the kind of tools
14 you saw on May 22nd?

15 A I do.

16 Q You may at any time stand again.

17 MR. WEINBACH: I ask that all these tools be
18 received.

19 MR. PANZER: May I have a voir dire?

20 THE COURT: You may.

21 VOIR DIRE EXAMINATION

22 BY MR. PANZER:

23 Q Officer Seton-Harris, when you saw the two
24 individuals emerge from the side door of the postal
25 station, you said you were about 40 feet away?

1

2

A Yes, sir.

3

4

Q And do you remember, was it raining or was it a clear night?

5

A It was clear, no rain.

6

7

Q And isn't it a fact that there are no lights on the side of that post office, illuminating the area?

8

A Which area, sir.

9

10

11

Q Well, Officer, I'll refer you to the mark where you have "S" here, which is near a side door and walkway. Isn't it true, there are no lights on the roof of the post office?

12

13

A No lights, that's right.

14

15

16

MR. WEINBACH: I don't mean to object. If this is a voir dire for these exhibits, it's improper.

17

18

MR. PANZER: I have a reason.

19

BY MR. PANZER:

20

21

22

Q You say you saw two figures emerge. Were you able to see the faces of these two figures that night?

23

A No.

24

25

Q Were you able to see Peter DiGiovanni emerge from that particular side entrance?

1
2 A To the best of my recollection, I recall a
3 third party, but my partner was handling that end.

4 MR. PANZER: I will object to all these items
5 offered in evidence on the grounds there is no
6 connection between the defendant Peter DiGiovanni
7 shown with any of these items.

8 THE COURT: Denied.

9 MR. STURIM: I join in this objection.

10 THE COURT: Denied.

11 Are these the tools that you found in that
12 place that you entered?

13 THE WITNESS: Yes.

14 THE COURT: All right. All marked in
15 evidence.

16 The Clerk will mark them at his convenience.

17 DIRECT EXAMINATION

18 BY MR. WEINBACH: (Cont'd.)

19 Q What did you do with all these tools after
20 you collected them?

21 A We took them down to the 120th Precinct and
22 they were vouchered with a police department property
23 voucher, which has a number. I can give it to you.

24 Q Did there come a time when you took them out
25 from the property clerk's office?

1
2 A Yes, sir.

3 Q What did you do with them?

4 A I brought them down to the federal building
5 where we are at now.

6 Q Did you bring them to my office?

7 A I did.

8 MR. WEINBACH: I have no further questions.

9 CROSS-EXAMINATION

10 BY MR. PANZER:

11 Q Officer Seton-Harris, you just testified that
12 there were no lights, right?

13 A On the building, sir.

14 Q On the building. Were there any lights on the
15 side of the walkway, whatsoever?

16 A No, sir.

17 Q It was 10:30 at night, quarter to 11:00, and
18 I believe you testified, I don't believe but you just
19 testified that you couldn't identify Mr. DiGiovanni as
20 being one of the figures that emerged from that particular
21 side entrance to the post office?

22 A That's what I said.

23 MR. PANZER: No further questions.

24
25 (Continued on next page)

CROSS-EXAMINATION

BY MR. STURIM:

Q Officer Seton-Harris, you indicated that you had arrived at this investigation with a brother officer; is that correct?

A Yes.

Q And you had parked your vehicle on a street directly in front of the station house; is that right?

A At the parking lot, that's correct.

Q From that location, you proceeded to go around to the building toward the walkway that you previously indicated on that map; is that right?

A That's right.

Q And now there came a time when you say you observed two figures coming out of the side door; is that right?

A Yes, sir.

Q Are you certain it was two figures?

A Yes, sir.

Q And you indicated that you were approximately 40 feet away from these individuals at that time?

A I did.

Q And after you saw these two individuals emerge, you saw them run, is that right?

1 A I did.

2
3 Q Did they -- was there anything to obstruct them
4 from the wooded area that is immediately adjacent to the
5 post office station?

6 A It's just brush there. Fairly flat.

7 Q When you observed them go or leave the side
8 door, did you give chase?

9 A I did.

10 Q And the wooded area itself was totally
11 unlighted; is that correct?

12 A Yes, it is.

13 Q And you then chased after both individuals
14 or just one?

15 A Went after both.

16 Q And did both of these figures go in the same
17 direction?

18 A They did.

19 Q And did you apprehend both of these individuals?

20 A No, sir.

21 Q You didn't?

22 A No.

23 Q There came a time when you came upon the
24 defendant, Mr. Schmanski; is that correct?

25 A Yes, sir.

Q Will you say where exactly did you come upon him with relation to the map?

A I tackled him in the field.

Q In the wooded area?

A No, in the field.

Q In a field?

A Yes.

Q Where is that field located with respect to the wooded area?

A It's between the post office and the wooded area.

Q Could you make a mark on that diagram with a crayon that had previously been given to you by the U.S. Attorney, with the letter "F"?

MR. WEINBACH: Your Honor, I think it's marked in printing.

THE COURT: Is there some other marking you want?

Q Would you make a mark where you caught up -- withdrawn.

Would you make a mark where you saw Mr. Schmanski or apprehended him? "S1", is that the mark you made?

A Yes, sir.

2 Q You say that's an area beyond the wooded area?

3 A Before the wooded area. The wooded area is
4 out here.

5 Q Would you turn around, Officer Seton-Harris,
6 and look at that map from the front so you have a better
7 view of it? Would you take a moment to take a look at it?

8 Did you testify before on direct examination
9 that that diagram is an accurate portrayal of the area
10 of the Eltingville Station, as well as the surrounding
11 area?

12 A I did.

13 Q Did you say that the wooded area is designated
14 as an area adjacent to the walkway?

15 A The wooded area, trees and large trees and
16 shrubs out here. This is wooded in the sense that that is
17 high grass, marsh-type growth.

18 Q When you drew the line or the imaginary line
19 with your finger, as you went down it, did you indicate
20 the location where you came upon Mr. Schmanski was within
21 a wooded area itself?

22 A Negative; in the field.

23 Q In the field? Now, where was this other
24 individual when you came upon Mr. Schmanski?

25 A He had just hit the woods.

1
2 Q Did you personally ever apprehend that
3 individual?

4 A No, sir.

5 Q Now, did you, after coming upon Mr. Schmanski,
6 leave him for any period of time to apprehend that
7 individual?

8 A No, sir.

9 Q You remained with Mr. Schmanski at that point?

10 A Yes, sir, I did.

11 Q Going back to the time when you saw these
12 two figures emerge from the side door, were you able to
13 see the faces of these two individuals?

14 A No, sir.

15 Q And at the time that you saw them emerge from
16 the premises, did you see either one of those individuals
17 carrying any of the tools that you have previously testi-
18 fied that you observed on the 22nd of May 1976?

19 A No tools.

20 Q In other words, at no time did you see Mr.
21 Schmanski handle or touch any of the items that are on
22 this table that are in front of the jury on the evening of
23 May 22nd?

24 A That's correct.

25 Q Did I understand you to say, Officer Harris,

1
2 that some of these tools were not seen by you until you
3 arrived at the 120th Precinct?

4 A Yes, sir, that's right.

5 Q Could you tell us which tools you happened
6 to notice while you were in the post office?

7 A Large crowbar, drill, the hacksaw and the
8 brown bag.

9 Q With respect to these four items or five
10 items you just mentioned, you at no time saw Mr. Schmanski
11 handle or touch those items; is that correct?

12 A No, sir, I didn't.

13 Q Did you see Mr. Schmanski enter that post
14 office building?

15 A No, sir.

16 Q Now, Officer Seton-Harris, have you ever
17 testified that you observed in fact three individuals
18 leaving the post office from the side door?

19 A Well, I was pursuing the two individuals in
20 the field, either party came out of the building. I
21 saw that through peripheral vision and my partner was
22 behind me and he handled that situation.

23 Q When you made this observation, where were
24 you?

25 A I was running towards the two individuals

1
2 that were running for the woods.

3 Q You indicated that this was a darkened area
4 that night -- it was at night, is that correct?

5 A It was at night.

6 Q You recall the fact that the only way you
7 could see the third individual was by peripheral vision?

8 A That's right.

9 Q In other words, you are telling the jury that
10 you never took your eyes off the other two individuals;
11 is that right?

12 A That's right.

13 Q But you do recall seeing a third individual
14 emerging from the same side door at another time; is that
15 right?

16 A Within -- when you say in time, it was a
17 matter of seconds.

18 Q Officer Seton-Harris, do you recall testify-
19 ing before a Grand Jury in this matter on August 19, 1976?

20 A Yes, sir.

21 Q Do you recall being asked this question and
22 giving this answer:

23 "Question: What did you do when you first
24 got there?

25 "Answer: We alighted from the radio car

1 and began a serious search of the building,
2 proceeding down the side of the building. I heard
3 a noise inside, indicating that there were persons
4 inside the building. I continued to follow this
5 walkway, and suddenly the side door sprang open and
6 three males emerged and leaped over the fence."
7

8 Do you recall being asked that question and
9 giving that answer?

10 A I do.

11 Q Do you recall testifying a moment ago that
12 there were just bushes next to this walkway; no fence.
13 There is a fence there. There is a fence around the whole
14 building.

15 Do you recall testifying that you saw three
16 males emerging and leap over that fence?

17 A Yes, I do.

18 Q Did you ever testify on August 19, 1976, that
19 you had only noticed that third individual by peripheral
20 vision?

21 A I wasn't asked the question that way, sir.

22 Q When the two -- withdrawn.

23 When you gave chase to these two individuals
24 that you described, did they separate at any point?

25 A No. 1 man was ahead of Schmanski by three

2 yards. They were all running; they were both running in
3 the same pack and I was able to tackle Schmanski.

4 Q How long a distance was it from the point
5 that you saw them first emerge, until the point that you
6 say you tackled Mr. Schmanski?

7 A How far?

8 Q Yes.

9 A I can't really remember. I guess 50, 60
10 feet.

11 Q Was the distance greater than this courtroom?

12 A No, about the width of the courtroom.

13 MR. STURIM: May we have a stipulation as to
14 the size of the courtroom?

15 THE COURT: Thirty eight and a half feet.

16 Q And at the time you tackled Mr. Schmanski,
17 did you see this other figure that you describe as No. 1,
18 still running?

19 A I was in the woods then, no.

20 Q During the time of your chase of this indi-
21 vidual, of these individuals, did you yourself have to go
22 over a fence?

23 A No, sir.

24 Q And how did you get through the same area?

25 A I had not reached the walkway where it was

1
2 fenced.

3 Q I'm sorry.

4 A I had not reached the walkway where it was
5 fenced. I was standing outside the fencing. When they
6 went over the fence, I had an angle on them, without any
7 fence in the way.

8 Q Could you show us in the diagram, by drawing
9 a red line, where you say the fence was?

10 THE COURT: Give him either color.

11 A This is the gate right here (indicating) ,
12 I was standing right before that gate, as you see in these
13 photographs.

14 Q I show you Government's Exhibit 16, does that
15 depict the gate area that you are talking about?

16 A Yes, sir.

17 Q And immediately to the right of the gate
18 area, as you look at that photograph, are there high
19 bushes and plants and other objects?

20 A Yes, weeds.

21 Q When you saw these figures jump the fence and
22 go in the direction away from you -- three figures, going
23 in a direction away from you --

24 THE COURT: No. That wasn't the testimony.

25 MR. STURIM: Let me withdraw it.

1 Q You may resume your seat, Patrolman.

2 (Pause)

3 Q You indicated before that there came a time
4 when you noted three individuals; is that correct?

5 A Yes.

6 Q Emerging from the same door?

7 THE COURT: That was not the testimony.

8 Q Did you observe three individuals come out of
9 the side door, at any time?

10 A I was aware of the third party while I was
11 pursuing the first two individuals.

12 Q And did you, during the course of your chase
13 of the two individuals that you described in making your
14 observation of this third individual emerging from the
15 side door, at any time, lose sight of the other individuals
16 that you were chasing?

17 A No, sir, I didn't.

18 Q But there was a time when you lost sight of
19 the first man; is that correct?

20 A Yes.

21 Q You acknowledge you did lose sight of him?

22 A Yes, yes.

23 Q The time you came upon the defendant Schmanski,
24 indicated in your direct examination that he was -- how
25

2 was he attired? How was he dressed?

3 A To the best of my recollection, I think a grey
4 jacket; dark pants and a dark blue shirt with like checks
5 in it. Shoes. This is when I tackled him. I didn't get
6 a look at him until I got him into the light and he had
7 on rubbers and those gloves that they showed me here.

8 Q You testified that the gloves they showed you
9 here, you didn't recognize them as the gloves being on Mr.
10 Schmanski.

11 A I can't say whether they are or they aren't.
12 They are similar to the ones he had on.

13 Q When did you first see those gloves?

14 A I took them off him on the scene.

15 Q When you took them off him, did you mark
16 them in any way?

17 A No, sir.

18 Q What did you do with them thereafter?

19 A I turned them over to Postal Inspector Cole.

20 Q And did he mark them in your presence in any
21 way?

22 A Not that I know of.

23 Q Do you know whether any other gloves were
24 recovered that evening?

25 A Yes, sir, I believe there were.

Q Where were those other gloves recovered, if you recall?

A To the best of my knowledge, DiGiovanni had them but I don't know whether they were on his hands or in his pocket, but he had a pair of gloves.

THE COURT: I move to strike that out; to the best of his knowledge. That's all he can testify about.

You may wish to cross-examine him if you wish to develop the information.

Q Officer Harris, in connection with this arrest, did you have to prepare any police reports or memorandum?

A I did.

Q Did you use those reports and memorandum today with respect to refresh your recollection as to the events of May 22, 1976?

A Today, no.

Q Did you use them at any time prior to today?

A Yes, last week.

Q May I see those notes and memorandum?

THE COURT: Certainly if they are available.

A Page 10, 2247, and there is my arrest report.

MR. WEINBACH: Today I turned over two arrest reports which have been marked as Government's

Exhibits 7 and 8 for identification to Mr. Sturim and I believe the officer may have refreshed his recollection with respect to these exhibits.

You have them.

MR. STURIM: May I have a moment, your Honor?

THE COURT: Yes.

MR. STURIM: It will be just one more moment, your Honor.

(Pause)

BY MR. STURIM:

Q Officer --

THE COURT: Mark that for identification, please.

THE CLERK: Document marked Defense Exhibit A for identification.

(So marked)

Q Officer, I show you your record made next with this matter. Did you at any time indicate in there that you removed gloves from the defendant, Mr. Schmanski?

A This is a memorandum entry, not an arrest record, but there is no indication stating I removed gloves.

Q Are you familiar with your own report of this arrest?

1 A I haven't seen it in over a week.

2 MR. STURIM: Do you have the original, counsel?

3 (Mr. Weinbach handing documents to Mr. Sturim.)

4 Q I am showing you Government's Exhibits 7 and
5 8 for identification and ask you to look at the same and
6 in particular the report regarding Mr. Schmanski. Did you
7 make any indication in that report that you removed gloves
8 from Mr. Schmanski, in this case?

9 A No, sir, I didn't.

10 Q Prior to your testifying here today, have
11 you discussed this matter with Officer Ames, your brother
12 officer, on the night of this occurrence?

13 A Yes, sir.

14 Q How many times have you discussed your
15 testimony with him?

16 A Last Monday and this morning.

17 Q Did you discuss it at any time before that?

18 A Yes, sir, I did. Not with Officer Ames.

19 Q Who else did you discuss your testimony
20 with?

21 A U. S. Attorney Weinbach and Inspector Cole.

22 Q Did you ever discuss with them the fact that
23 you had lost sight of any of the individuals that were
24 involved in this matter on the night of May 22nd?
25

2 A No, I didn't.

3 Q Did you tell them that you observed the third
4 male, which was observed at the side door through peripheral
5 vision?

6 A I didn't.

7 Q The first time you mentioned peripheral vision
8 was today in court, was it not?

9 A Yes, sir.

10 Q You didn't testify to that at the Grand Jury?

11 A I didn't.

12 Q You didn't mention it to the postal inspector?

13 A I don't remember.

14 Q Did you ever mention it to your fellow officer
15 brother Ames?

16 A I don't remember.

17 Q Would you tell us what was done with the
18 clothing that Mr. Schmanski was wearing on the day that
19 you arrested him on May 22nd?

20 A No, sir, I can't.

21 Q Until what hour of that day were you with Mr.
22 Schmanski?

23 A If I can refresh my memory, I believe it was
24 close to 3:30-4:00 a.m. the following morning.

25 Q That would be May 23rd?

2 A Yes, sir.

3 Q When you last saw him, was he still dressed
4 in the same manner that you originally seen him out in the
5 field that you described?

6 A Yes, he was.

7 Q Did you at any time subsequent to that, have
8 occasion to see clothing that was identified to you as
9 being Mr. Schmanski's clothing?

10 A Last Monday I saw clothing that I can identify
11 as his, yes.

12 Q Where did you see that?

13 A Mr. Weinbach's office.

14 Q Amongst the clothing -- withdrawn.

15 What form was that clothing kept, if you
16 recall?

17 A It was in a sealed plastic bag.

18 Q Did you go through the plastic bag?

19 A I looked through it. I didn't open it.

20 Q Did you see the gloves that you described
21 as originally being on Mr. Schmanski in that plastic bag?

22 A No, sir.

23 THE COURT: I have no further questions.

24

25 (Continued on next page.)

REDIRECT EXAMINATION

BY MR. WEINBACH:

Q Officer Seton-Harris, do you know approximately what time you arrested Mr. Schmanski?

A 11:00 o'clock.

Q And you took him to the police station after he was arrested?

A Yes, sir.

Q And at the police station, were various -- was various information take from Mr. Schmanski?

A Yes, it was.

Q And Mr. DiGiovanni?

A Yes, sir.

Q And you have two exhibits before you. Those are the reports that you made?

A Yes, they are.

Q That's Government's Exhibits 7 and 8 for identification?

A Right.

Q And you made these reports?

A Yes, I did.

Q And based upon information that Mr. DiGiovanni and Mr. Schmanski gave you?

A Yes, that's correct.

1
2 MR. WEINBACH: Your Honor, I ask that these
3 be received at this time.

4 MR. STURIM: I'm going to object.

5 THE COURT: Sustained.

6 MR. PANZER: Same objection.

7 MR. WEINBACH: For the limited purpose because
8 there seems to be a question of identity that Mr.
9 Seton-Harris read the names on the arrest record
10 and nothing else. There seems to be an identity
11 question here.

12 THE COURT: He testified that these are the
13 men he arrested. So, what's the point of having the
14 report?

15 MR. WEINBACH: Can I have this marked, please?

16 THE CLERK: Photo marked as Government's
17 Exhibit 35 for identification.

18 (So marked)

19 BY MR. WEINBACH:

20 Q Officer Seton-Harris, Mr. Sturim asked you some
21 questions on how the two defendants were dressed on the
22 night of the arrest; do you recall these questions?

23 A Yes, sir.

24 Q I'm going to show you what has been marked
25 Government's Exhibit 35 for identification, a photograph,

1 and ask you if that fairly represents what the defendant --
2 first of all does it show the defendants in the photograph?
3

4 A Yes, it does.

5 Q Does it fairly represent what they were
6 wearing on the evening of May 22nd?

7 A Yes, sir, it does.

8 MR. WEINBACH: I ask that be received, your
9 Honor.

10 THE COURT: Have you seen it?

11 MR. STURIM: May I see it?

12 (Mr. Weinbach handing photograph to Mr. Sturim.)

13 MR. STURIM: No objection.

14 THE CLERK: Government's Exhibit 35, photo-
15 graph, marked in evidence.

16 (So marked)

17 BY MR. WEINBACH:

18 Q Now, Officer Seton-Harris, do you know where
19 the defendants were taken after being taken to the 120th
20 Precinct?

21 A No.

22 Q But you left the precinct while they were
23 still there?

24 A Yes. Jimmy Cole, Inspector Cole was -- I had
25 to release them to them and I left before he took them

down.

MR. WEINBACH: I have no further questions.

THE COURT: Any further recross?

MR. PANZER: One or two questions.

RECROSS-EXAMINATION

BY MR. PANZER:

Q Officer Seton-Harris, you had a conversation with Mr. DiGiovanni after he was arrested?

A Yes, sir, I did.

Q Did he ever tell you that he was one of the men that was in that post office?

THE COURT: Don't answer that.

Q Can you relate the conversation that you had --

THE COURT: Don't answer that.

MR. PANZER: No further questions.

RECROSS-EXAMINATION

BY MR. STURIM:

Q Officer Harris, the photograph you just looked at, showing or depicting the clothing that Mr. Schmanski was attired in that evening, were you present when that photograph was taken?

A No, sir.

Q Did the defendant arrive at the station house in the same attire when you had apprehended him?

1 A Yes, he did.

2 Q Had you removed anything from his person at
3 that time?

4 A Just the gloves.

5 Q Just the gloves you took from him?

6 A I couldn't get the handcuffs on. That's why
7 I took the gloves.

8 Q So when the photograph was taken, that was
9 just offered in evidence by the U. S. Attorney, there were
10 then no gloves on the defendant; is that correct?

11 A Yes, sir.

12 Q And you never marked the gloves in any way --

13 THE COURT: Don't answer that.

14 MR. STURIM: I have no further questions.

15 MR. WEINBACH: Just one, your Honor.

16 RE-REDIRECT EXAMINATION

17 BY MR. WEINBACH:

18 Q Who did you give the gloves to --

19 THE COURT: Don't answer that.

20 Next witness.

21 MR. WEINBACH: The Government calls Leonard

22 Ames.

23

24

25 (Continued on next page.)

THE CLERK: Will you raise your right hand,
please.

LEONARD AMES, called as a witness,
having been first duly sworn by the Clerk of the
Court, testified as follows:

THE CLERK: Please state your name and spell
it.

THE WITNESS: My name is Leonard A-m-e-s.

DIRECT EXAMINATION

BY MR. WEINBACH:

Q Mr. Ames, by whom are you presently employed.

A I am retired.

Q Did you work for the New York City Police
Department?

A I did.

Q Did you work on May 22, 1976?

A I did.

Q And where were you stationed; what precinct?

A 123rd Precinct.

Q Where is that?

A It's in Tottenville, Staten Island.

Q What time did you work on May 22nd?

A I worked the 4:00 to 12:00 tour at the 120th
Precinct.

1 Q Who was your partner that day?

2 A Officer Seton-Harris.

3 Q Was that the gentleman who just testified?

4 A Yes, sir.

5 Q Were you in a patrol car?

6 A Yes, sir.

7 Q Directing your attention to May 22, 1976,
8 approximately 10:30, were you in the patrol car with
9 Officer Seton-Harris?
10

11 A I was.

12 Q Did you receive a call on the police phone?

13 A Yes, sir.

14 Q And as a result of that phone call, what, if
15 anything, did you do?

16 A We responded to a post office in Eltingville.

17 Q What did you do when you got to the post
18 office?

19 A We pulled -- well, we pulled into the lot
20 of the post office, pulled up in front of the main entrance.
21 Patrolman Seton-Harris alighted from his side and I from
22 my side. I went to the front door and he went to the
23 right hand side of the post office as you go in. I shifted
24 in the front entrance of the post office and found every-
25 thing secure. I proceeded to the proximity of where

Seton-Harris was and halfway there he called to me.

Q What, if anything, did you see or hear at that time?

A When I got around, I did arrive close to him, he took off, he ran.

MR. PANZER: I didn't hear that last part.

THE WITNESS: When I got near Patrolman Seton-Harris, he ran.

Q What did you do then?

A I proceeded alongside of him and Patrolman Seton-Harris began to run off at an angle.

Q What did you do?

A I got about halfway -- about alongside the building I observed this -- a male on the ground by a fence.

Q Would you step down from the witness stand for a second and on Government's Exhibit 33 in evidence, would you please mark with this red pencil a letter "A" where you were when you observed this individual and the letter "D" where you saw this individual.

(Witness indicating)

Q Did you mark the "D"?

A Yes.

Q Approximately how far away from this individual

2 were you at the time you first saw him?

3 A Fifteen, twenty feet.

4 Q Could you tell the members of the jury what
5 you saw, actually?

6 A I saw an individual on the ground in a prone
7 position.

8 Q Did you see him do anything?

9 A Well, halfway out of a hole in a fence --

10 MR. PANZER: I didn't hear that last answer.

11 THE WITNESS: His body was coming out of the
12 hole in the fence.

13 Q What did you do?

14 A I told him to stop. I proceeded with my gun
15 out.

16 Q Did the individual stop?

17 A Yes, he did.

18 Q What did you then do?

19 A At this time I called to my partner and asked
20 him if he was all right because he was out of my sight.
21 I couldn't see him.

22 Q Did you place this individual under arrest?

23 A Yes.

24 Q Approximately what time was it that you placed
25 him under arrest?

1
2 A I can't recall the exact time, sir.

3 Q Do you recall how long it took you to get to
4 the postal station?

5 A It took us ten to twelve minutes after the
6 alarm came over.

7 Q Do you see the individual you arrested on that
8 evening in the courtroom today?

9 A Yes, I do.

10 Q Would you point him out?

11 A It's that gentleman over there.

12 Q It's the second individual?

13 A Yes.

14 MR. WEINBACH: Let the record indicate that
15 Officer Ames pointed out Mr. DiGiovanni.

16 Q Would you tell the jury what kind of clothing
17 he was wearing on this evening?

18 A To the best of my recollection, they were old
19 clothes. They were not new.

20 MR. PANZER: I object to "old clothes".

21 THE COURT: Overruled.

22 Q You may resume your seat.

23 Mr. Ames, after placing Mr. DiGiovanni under
24 arrest, what, if anything, did you do?

25 A About the same time I placed him under arrest,

1
2 I called to my fellow -- my fellow officer and said, "Bring
3 him over here," and at that time he brought his prisoner
4 over because I felt it best, all of us, for us to leave
5 at the same time.

6 MR. STURIM: That calls for the operation of
7 his mind and I ask it be stricken.

8 THE COURT: Denied.

9 MR. STURIM: Respectfully except.

10 Q Was that the time they were taken into the car?

11 A Yes.

12 Q Did you see the other individual that Officer
13 Seton-Harris arrested?

14 A Yes.

15 Q Do you see him in the courtroom today?

16 A I do.

17 Q Is he the man who is sitting in front of me?

18 A It is.

19 MR. WEINBACH: Let the record indicate that Mr.
20 Ames has pointed to Mr. Schmanski.

21 Q What, if anything, did you do after the
22 prisoners were put in the car?

23 A About the same time a man from the anti-crime
24 showed up. Patrolman Seton-Harris stayed in the radio
25 patrol car with the two prisoners and we proceeded

1
2 alongside of the building to where I apprehended the
3 prisoner there, and I got down to the hole in the fence
4 and right at the hole in the fence, I found a prybar and a
5 set of bolt cutters.

6 Q All right, Mr. Ames, I am going to show you,
7 first of all, Government's Exhibit 17 in evidence, Govern-
8 ment's Exhibit 29 in evidence and ask you if you can
9 identify those pictures and tell the jury what they
10 represent?

11 A This one here shows a picture of the side of
12 the post office.

13 Q That's Government's Exhibit 17 in evidence,
14 and how about Government's Exhibit 29 in evidence; what
15 does that depict?

16 A This is the hole in the fence. Right outside
17 the door, the side entrance of the post office.

18 Q Is that the way the hole appeared on May 22,
19 1976?

20 A Yes, sir.

21 Q Now, Government's Exhibit 16 in evidence
22 appears to be a photograph of the alleyway; is that what
23 you said you saw that evening? Is that a view that you
24 saw?

25 A This is the view, as you come in from the

front of the post office on the right.

Q Would that have been the view that you would have had on that evening?

A There is only one difference. The night that I seen this front door it was shut. This fence door was closed. Other than that, it's the same.

Q And you said you saw a crowbar and what else?

A I seen a prybar, not a crowbar.

Q A prybar and what else?

A Bolt cutters; what is known as bolt cutters.

Q And where were they?

A Between the hole and the platform that leads into the post office; the side entrance.

Q Do Government's Exhibits 23 and 27 now in evidence, appear to be the bolt cutters and prybar that you saw?

A They are.

Q What did you do with those bolt cutters and prybar?

A I took custody of them.

Q Did you give them eventually to Officer Seton-Harris?

A I did.

Q What did you do after you saw these two pieces?

Did you go into the building?

A I did.

Q Did you make an inspection?

A I took them into the building with me.

Q Did you make an inspection?

A I and two other patrolmen.

Q Could you tell the jury what you saw?

A On a subsequent search of the premises, we ended up in front of the building and the front of the building would be the main entrance and to the left of the main entrance, I observed numerous amounts of tools laid out in front of -- approximately three feet away from a wall that had a round hole in it and some exposed wires and a piece of the sheetrock that was cut out and these tools were laid out opposite this hole in the wall like a doctor who laid out tools for an operation.

Q If you would, could you step down from the witness stand and examine the tools that are on the table.

MR. WEINBACH: Should I go through --

THE COURT: No, just ask him generally.

(Continued on next page.)

1
2 BY MR. WEINBACH: (Cont'd.)

3 Q Mr. Ames, could you take a look at the tools
4 that appear on the table in front of you and tell the
5 members of the jury whether those tools appear to be the
6 kind of tools that you saw in the post office on May 22nd?

7 A Those are the tools.

8 Q And what did you do with those tools?

9 A I put them all together. What I could fit
10 in this thing here, that was alongside these tools, I put
11 them in here. All these tools were laid out and this
12 crowbar was behind the tools that were laid out and the
13 bag adjacent to the tools. I gathered them up and put them
14 into the bag, anything that would fit in and the only
15 thing that wouldn't fit it was this four foot crowbar.

16 Q What did you eventually do with the tools
17 and tool bag?

18 A I took them over, Patrolman Seton-Harris and
19 myself, invoiced these on an appropriate voucher.

20 Q Did you eventually give those tools to
21 Officer Seton-Harris?

22 A I did.

23 Q Now, Mr. Ames, did you inspect the outer
24 door of the postal station at any time?

25 A I did.

1 Q What did you observe?

2 A The lock had been -- there were marks around
3 the lock.

4 Q Could it have been jimmied?

5 MR. STURIM: Objection.

6 THE COURT: Sustained.

7 Q Now, look at Government's Exhibit 28 in
8 evidence and does that fairly represent the door as you
9 saw it on that evening?

10 A That is it.

11 Q And Government's Exhibits 31, 30 and 32, do
12 those pictures fairly represent the condition of the room
13 where you saw the tools on this evening?

14 A They do.

15 MR. WEINBACH: I have no further questions.

16 CROSS-EXAMINATION

17 BY MR. PANZER:

18 Q Officer Ames, can you tell the Court and
19 jury whether there were any lights on the side of the post
20 office, continuous, next to the fence, next to the wire
21 fence?

22 A No, I cannot.

23 Q There were no lights?

24 A I can't tell you; I don't know.

25 Q You don't remember?

1
2 A No, because I had a flashlight.

3 Q Well, now, was the front of the post office
4 lit?

5 A The front of the office; the lobby of the
6 post office was lit.

7 Q Isn't it a fact there were no lights along-
8 side the door?

9 A I don't know.

10 Q You didn't look?

11 A I don't know.

12 Q Did you look?

13 A I don't recall.

14 Q Were you directly in back of Officer Ames --
15 were you directly in back of Officer Seton-Harris --

16 A At one point.

17 Q I didn't finish the question.

18 Were you directly in back of Officer
19 Seton-Harris when you approached the side entrance to the
20 post office?

21 A No, I wasn't.

22 Q Where were you at the time Mr. Seton-Harris
23 approached the side entrance to the post office?

24 A I was shaking the front doors of the lobby.

25 Q When you finished checking the front doors

1
2 and found them secure, did you then proceed towards
3 Officer Seton-Harris?

4 A When I found the door -- at about the same
5 time I found the doors secured, Officer Seton-Harris called
6 to me.

7 Q Did you then proceed to Officer Seton-Harris?

8 A I did.

9 Q How far behind Officer Seton-Harris were you
10 after he called to you?

11 A Twelve, thirteen feet.

12 MR. STURIM: I didn't hear that response;

13 I'm sorry.

14 THE WITNESS: Twelve or thirteen feet.

15 Q All right.

16 Will you indicate by marking an "X", come
17 over -- exactly where Officer Seton-Harris was when you
18 were twelve or thirteen feet behind him?

19 A There?

20 Q Yes.

21 A This, the main entrance, approximately here.
22 When he called to me, you got a bank of maybe four or five
23 doors here. I had checked the last door and he was standing
24 here, approximately here, out of my sight. He called to
25 me and I walked out to here and he had proceeded over from

there.

Q Will you indicate with a mark "X" where you were when Officer Seton-Harris started to proceed into the field?

A I was approximately here. It's the walkway. I'm sorry.

Q Not when he called to you; when you saw him.

A I was here.

Q You were there?

A Yes.

Q Is this a fair representation of where you were?

THE COURT: You are marking it with what?

MR. PANZER: Blue pen.

Q Would you indicate with -- mark an "H" where Officer Seton-Harris was where this mark "X" was placed?

A What kind of mark?

Q "H".

THE COURT: In blue pen.

MR. PANZER: In blue pen.

Q You say you were about 12 feet or 13 feet behind Officer Harris; is that true?

A Approximately that.

Q This area is an unoccupied area; is that

2 right?

3 A Right.

4 Q This was in May?

5 A Right.

6 Q And the trees were in full bloom?

7 A There are no trees.

8 Q No trees?

9 A No.

10 Q No trees at all?

11 A No, just swamp reeds.

12 Q There are tall reeds?

13 A Right.

14 Q And the swamp reeds were in full bloom; is
15 that true?

16 A There isn't that many there. They were in
17 full bloom.

18 Q I didn't ask you that.

19 A Full bloom, yes.

20 Q Your attention was on Officer Harris as he
21 was proceeding into this unoccupied area; isn't that true?

22 A Repeat that?

23 Q Your attention was focused on Officer Harris,
24 indicated by mark "H", as he was proceeding into this
25 wooded area?

1
2 A It was, sir, yes.

3 Q Did you see three men jump over a fence?

4 A No, sir.

5 Q Now, when you say you approached and indicate
6 to me by mark "O", where you found Mr. DiGiovanni?

7 A Well, it would have to be right next where
8 the "D" is.

9 Q Next to the "D"?

10 A In other words, it would have to be right
11 here because the "D" is in the way. I can't put an "O"
12 there.

13 Q That's all right. You found Mr. DiGiovanni
14 lying in the grass?

15 A He's in this fence -- his body was halfway
16 in this fence and halfway in the fence like --

17 Q Isn't it a fact that you found Mr. DiGiovanni --
18 withdraw that.

19 In this wooded area, further up, there are some
20 railroad tracks; isn't that right?

21 Q The railroad tracks are in back. Fifteen to
22 thirty feet in the area.

23 Q Isn't it a fact that you found Mr. DiGiovanni
24 about 40 feet away from this door or the fence in this
25 wooded area, which I am indicating by a line?

2 A No, sir.

3 Q In blue pencil?

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4 A No, sir.

5 Q Did you see Mr. DiGiovanni place these articles?

6 What do you call this; a crowbar?

7 A It's a prybar.

8 Q This is steel cutters?

9 A Bolt cutters.

10 Q Did you see him place these bolt cutters in
11 the position where you found them?

12 A No, sir.

13 Q Did you at any time see Mr. DiGiovanni emerge
14 from the side door --

15 A No, sir.

16 Q -- of this post office?

17 A No, sir. No, sir.

18 Q Did you -- I believe you testified you never
19 saw anybody jump over a fence?

20 A No.

21 Q So, actually, all you can tell us now as to
22 Mr. DiGiovanni, when you got there, is you saw Mr. DiGiovanni
23 lying in the grass?

24 A Yes, prone.

25 Q Was he in an intoxicated condition?

2

A No, sir.

3

Q Did he appear to be to you in a drugged

4

condition?

5

A No. He was afraid.

6

Q Was he lucid?

7

A Explain that.

8

Q Was he speaking clearly?

9

A Yes, sir.

10

Q Did he at any time -- I believe you testified

11

you never saw him emerge from the side door?

12

A No, sir.

13

Q Did you ever at any time see him jimmy the

14

side door?

15

A No, sir.

16

Q Now, you are certain you saw him lying in

17

the grass -- I will withdraw that question.

18

THE COURT: You want the witness off the

19

stand?

20

MR. PANZER: I would like him on the witness

21

stand, thank you.

22

Q I show you People's Exhibit 29 in evidence

23

and ask you to describe to the jury just about where you

24

say you saw Mr. DiGiovanni?

25

A I can't determine whether this is at the

1
2 outside of the fence or inside of the fence. If this is
3 showing the outside of the fence, he was right at the
4 bottom of this hole. Next to the hole, adjacent to the
5 hole, whichever side of the fence he was on.

6 Was that picture taken from the outside of
7 the fence or inside? He was next to the hole.

8 Q Lying prone in the grass?

9 A Right.

10 Q Did you ever see him before you stated that
11 you saw him lying prone in the grass?

12 A I seen a form, as he was going down.

13 Q Did you see the form crawling through the
14 hole?

15 A No, sir.

16 Q Well, Officer Ames, you said you saw a form
17 as you were going towards the door to the walkway. Well
18 where did that form come from?

19 A Where did it come from?

20 Q Yes.

21 A I couldn't tell you where it come from. I don't
22 know where it come from.

23 Q I believe you stated in response to my
24 questions that you never saw Mr. DiGiovanni lie down in the
25 grass; isn't that true?

1 A Lie down from an upright position?

2 Q Yes.

3 A No.

4 Q Never saw him do that but you saw a form. Did
5 you identify that form as being Mr. DiGiovanni?

6 A Yes, sir.

7 Q In what way?

8 A Because I never took my eyes off the form.

9 Q If you never took your eyes off of him, you
10 must have seen him lie down in the grass?

11 A I said that, counselor.

12 Q You just testified that you never saw that
13 form lie down in the grass.

14 A I seen a form on the ground.

15 Q On the ground?

16 A Right.

17 Q But you also testified that when you came
18 around, you saw a form standing upright?

19 MR. WEINBACH: Your Honor, I don't think that
20 was the testimony at all.

21 THE COURT: The witness is shaking his head
22 negatively?

23 THE WITNESS: I didn't say that at all. I
24 don't recall saying that.
25

1
2 BY MR. PANZER:

3 Q You don't recall.

4 A I'll read it over.

5 Q Did you pull your pistol or have your pistol
6 in your hands?

7 A I did.

8 A You had a flashlight, I believe you testified?

9 A I did.

10 Q Did you shine that flashlight -- when you
11 approached the side entrance of the post office, did you
12 flash your flashlight in the alleyway?

13 A I did.

14 Q Did you see anything when you shined -- when
15 you directed the shine of your flashlight in the alleyway?
16 Did you see anything immediately at that time?

17 A As soon as I made my entrance from around --

18 Q Yes.

19 A No.

20 Q You walked in further?

21 A Right.

22 Q And then for the first time you saw Mr.
23 DiGiovanni lying?

24 A I seen a form.

25 Q You approached that form?

1 A Right.

2 Q And that form was Mr. DiGiovanni?

3 A Yes.

4 Q Where did you find these two items, the prybar
5 and the bolt cutters or whatever you want to call it?

6 A Between the entrance to that door there is a
7 little platform and the fence.

8 Q In other words, Officer--do you mind getting
9 over and showing to the jury where you found him on the
10 platform?

11 A Between the platform and the fence.

12 Q In the alley?

13 A I guess you can call it that.

14 Q Officer, isn't it a fact that you proceeded
15 further into the woods and there was Mr. DiGiovanni lying
16 on the floor and you put your pistol to his head?

17 A No, sir.

18 Q Did you ever tell Mr. DiGiovanni, "Don't move
19 or I'll shoot you"?

20 A I did.

21 Q What did he say to you?

22 A He says, "Don't get nervous." I says, "I'll
23 get nervous because I'm retiring next week."

24 Q Because you were retiring?

2

A Next week.

3

Q You got 20 years?

4

A Twenty three. It was my last tour. I also

5

asked him if there was anybody else in the post office --

6

THE COURT: No. No.

7

Q Now, Officer Ames, when Officer Seton-Harris --

8

I will withdraw that question.

9

Did you at any time see Officer Seton-Harris

10

chasing anybody?

11

A I seen him run by but I didn't see him chasing

12

anybody.

13

Q You saw him run where?

14

A Off to my -- it would be from the corner; it

15

would be a right angle.

16

Q Were you able to see his blue uniform in the

17

darkness?

18

A For a certain extent and then I lost sight

19

of him.

20

Q Did you see anybody in front of him?

21

A No, sir.

22

Q You were directly in front of Officer

23

Seton-Harris?

24

A For a specific amount of time, yes, sir.

25

Q Did you testify before the Grand Jury?

1
2 A No, sir.

3 Q Did you give a statement to the United States
4 Attorney as to what you saw?

5 A Yes, sir.

6 Q Did you tell the United States Attorney that
7 you saw somebody emerge from the side door that was jimmied?

8 A No, sir.

9 MR. PANZER: May I have a moment, your Honor?

10 (Pause)

11 Q Officer Ames, you're positive now, as you
12 testify from this stand, that you never saw anybody come
13 out of that side door?

14 A No, sir, I didn't.

15 Q You are not positive?

16 A I didn't see anybody come out of the side
17 door.

18 MR. PANZER: No further questions.

19 CROSS-EXAMINATION

20 BY MR. STURIM:

21 Q Officer Ames, you indicated that after you
22 had checked a front door, you walked around to the walkway
23 that leads to this side door. You are familiar with the
24 side door we have made reference to?

25 A Yes, sir.

1
2 Q And you had gotten as close to Seton-Harris
3 as 12 and 13 feet to him; is that right?

4 A When I got to the corner of the building, I
5 was approximately 12, 13 feet away.

6 Q When you saw Mr. Seton-Harris, was he to the
7 right or --

8 A He was to the front at an angle.

9 Q How far was he from the side door at that
10 point?

11 A Maybe 20 feet, on an angle.

12 Q And when you first saw Seton-Harris, was he
13 standing still at that point or was he running or walking?

14 A He was in full flight.

15 Q And at the time you saw him in full flight,
16 you were attracted to the fact he was running in this
17 direction; is that right?

18 A That's right.

19 Q And you saw -- you were focusing your eyes on
20 Seton-Harris; is that right?

21 A For a slight second.

22 Q For a period of time?

23 A Yes.

24 Q While you were looking directly at Officer
25 Seton-Harris, did you see anybody in front of him?

1
2 A No, I didn't.

3 Q Did you see anybody alongside of him?

4 A No, I didn't.

5 Q You never saw any other individual?

6 A No, I didn't.

7 Q Till you later say you came upon the other
8 defendant : this matter?

9 A That's right.

10 Q You weren't using any peripheral vision when
11 you were looking at Seton-Harris, were you?

12 Do you know what peripheral vision --

13 A I sure do.

14 Q Could you tell the jury what peripheral
15 vision is?

16 A I can see the Judge at this time.

17 Q In the side of your eye?

18 A Yes, I can.

19 Q You never saw any other individual on May 21,
20 1976, except Seton-Harris, at the time you were looking
21 in that direction; is that right?

22 A That's right.

23 Q At the time you saw Officer Seton-Harris,
24 you indicated that you had a flashlight in your hand?

25 A That's right.

1
2 Q Were you shining it in the direction that you
3 were going?

4 A I don't recall what direction I had the flash-
5 light shining.

6 Q Do you recall whether Officer Seton-Harris,
7 when he emerged from the car, had a flashlight in his
8 possession?

9 A I don't recall, sir.

10 Q Do you recall whether Officer Seton-Harris
11 was using his flashlight as you came around the corner of
12 the building?

13 A I can't recall.

14 Q You don't recall whether he had any light on
15 at all?

16 A I don't.

17 Q The wooded area we established was dark?

18 A Yes.

19 Q The field that is next to the post office,
20 is that also a dark area?

21 A Yes, sir.

22 MR. STURIM: I have no further questions.

23 MR. WEINBACH: Just one or two, your Honor.

24

25 (Continued on next page.)

REDIRECT EXAMINATION

BY MR. WEINBACH:

Q I believe I asked you, Mr. Ames, how Mr. DiGiovanni and Mr. Schmanski were clothed on that evening. I am going to show you Government's Exhibit 35 in evidence and ask you to take a look at it. Does that appear to show how they were dressed on this evening?

A Yes, sir.

Q And there are a number of questions about whether or not the wooded area on Government's Exhibit 35 in evidence, whether or not the weeds were in bloom or whatever. Do you recall those questions?

A I do.

Q I am going to show you Government's Exhibit 15 in evidence and ask you if that photograph fairly depicts what is next to the postal station; the kind of vegetation?

A That is it.

MR. WEINBACH: No further questions.

THE COURT: Thank you, Officer. That will be all.

MR. STURIM: May I just --

THE COURT: No. That will be all.

Thank you, Officer.

Next witness.

MR. WEINBACH: The Government calls Postal
Inspector James Cole.

J A M E S C O L E , called as a witness,
having been first duly sworn by the Clerk of the
Court, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: James C. Cole.

DIRECT EXAMINATION

BY MR. WEINBACH:

Q Mr. Cole, by whom are you employed?

A Postal Inspection Service.

Q In what capacity?

A Postal Inspector.

Q Were you working on May 22, 1976?

A Yes, sir, I was.

Q Did you participate in the investigation of
a breaking and entering at that postal station in Staten
Island?

A Yes, I did.

Q And was that the Eltingville Postal Station?

A Yes, it was.

Q Did you go to that postal station?

A Yes, I did.

Q And after the breaking and entering?

2 A Yes, I did.

3 Q Could you tell the members of the jury what
4 you saw when you got into the building?

5 A We went to the building that night or early
6 that morning. There we found the wall next to the vault
7 area had been stripped. The paneling had been pulled back.

8 Q Do you know if anybody was arrested in connection
9 with that breaking and entering?

10 A Yes, there was.

11 Q Did you see the people who were arrested that
12 evening?

13 A Yes, I did.

14 Q Do you see them in the courtroom today?

15 A Yes, I do.

16 Q Would you point them out?

17 A Mr. Schmanski and Mr. DiGiovanni.

18 MR. WEINBACH: Indicating the defendants,
19 your Honor.

20 Q Subsequent to their arrest, do you know where
21 the defendants were taken?

22 A I believe they were taken to the 120th -- the
23 120th Precinct.

24 Q Do you know where they were taken after that?

25 A I left there with my partner, Jerry Gorin and

2 we took them to the federal prison in Manhattan.

3 Q In connection with their booking at the precinct,
4 do you know Officer Seton-Harris?

5 A Yes, I do.

6 Q Did he give you any evidence in connection
7 with the arrest of the defendants?

8 A Yes, he did.

9 Q Will you tell the members of the jury what he
10 gave you?

11 A He gave me a pair of workman gloves.

12 Q Did you keep possession of those working
13 gloves?

14 A Yes, I did.

15 Q Did there come a time when you came to my
16 office and gave me those working gloves?

17 A Yes, I did.

18 Q I will show you Government's Exhibit 9 for
19 identification and ask if those are the gloves that you
20 kept in your custody and gave to me this week?

21 A Yes, they are.

22 MR. STUFIM: Objection.

23 MR. WEINBACH: Mark them, please. in evidence.

24 MR. STURIM: Objection.

25 THE COURT: Overruled.

2 THE CLERK: Government's Exhibit 9 marked in
3 evidence.

xxx

4 (So marked)

5 BY MR. WEINBACH:

6 Q Now, Inspector Cole, do you know if the clothes
7 of the defendants were removed at the Metropolitan Correction
8 Center?

9 A Yes, they were.

10 Q Did you take custody of those clothes?

11 A Yes, I did.

12 Q Did you also bring those into my office this
13 week?

14 A Yes, I did.

15 Q I'm going to show you what has been marked as
16 Government's Exhibit 10 for identification and ask you if
17 that appears to be the pants that Mr. Schmanski was wearing
18 on May 22nd?

19 A Yes, it does.

20 Q And I'm going to show you Government's Exhibit
21 19 for identification and ask you if the clothing in there
22 appears to be the pants as well as the shoes that Mr.
23 DiGiovanni was wearing on May 22nd?

24 A Yes, it does.

25 MR. WEINBACH: I offer these in evidence,

2

your Honor.

3

MR. PANZER: No objection.

4

MR. STURIM: No objection.

5

THE COURT: All right. Mark them.

6

THE CLERK: Government's Exhibits 10 and 19

xxx

7

for identification marked in evidence.

8

MR. WEINBACK: I have no further questions.

9

THE COURT: Any cross?

10

MR. PANZER: No, your Honor.

11

MR. STURIM: Just this question of Inspector

12

Cole.

13

CROSS-EXAMINATION

14

BY MR. STURIM:

15

Q Did you ever see the gloves in the defendant's possession?

16

17

A No, I didn't.

18

Q You say you were handed these gloves by Officer Seton-Harris?

19

20

A Yes, they were.

21

Q Did you put any marking on those gloves?

22

A No, I didn't.

23

Q Did you recover any other gloves?

24

A There was a brown glove recovered also.

25

A Where was this?

2 A It was in Mr. DiGiovanni's pocket, I believe.

3 Q Did you take it from Mr. DiGiovanni?

4 A Yes.

5 Q And did you separately mark those gloves?

6 A The other gloves are brown cotton like gloves
7 and these have the tape around the two fingers. You could
8 tell the difference in them.

9 Q Could you recall which ones were the ones that
10 had a tape around them?

11 A Yes, the pair.

12 Q Pair of what?

13 A The pair. The other glove that Mr. DiGiovanni
14 had was just the one brown glove and the ones that Officer
15 Seton-Harris turned over to me was taken from Mr. Schmanski,
16 was a pair of work gloves.

17 Q You didn't see them taken from him?

18 A No, I didn't.

19 Q You said that was a pair of gloves. You
20 identified a total of three gloves?

21 A Yes.

22 Q The one -- the two from Mr. Schmanski and the
23 one from Mr. DiGiovanni?

24 A Yes. When I came to the precinct, Mr. DiGiovanni
25 and Mr. Schmanski was seated in a detainment cell here.

1 They brought them out for processing or something. As they
2 were walking out, he had the glove. It was either stuffed
3 in his pocket or sitting on a bench there.
4

5 Q You say the glove was sitting on the bench?

6 A It could have been; I don't recall.

7 Q It might have been when you first observed
8 him?

9 A I don't remember exactly.

10 Q Could it have been as many as four or five
11 gloves recovered that evening?

12 A Possibly.

13 MR. STURIM: Could I have a moment?

14 THE COURT: Yes.

15 MR. STURIM: May I approach the side bar with
16 United States Attorney, YOUR Honor?

17 THE COURT: No.

18 BY MR. STURIM:

19 Q Mr. Cole, have you had occasion before you
20 came into court here to testify today, to examine the
21 clothing parcels that had been brought into this courtroom?

22 A Yes, I have.

23 Q Did you also see gloves while you were
24 examining these items?

25 A Yes, I did.

1 Q And did you see in fact more than three
2 individual gloves?
3

4 A Yes, I did.

5 Q How many gloves did you see?

6 A I believe there were five individual gloves.

7 Q You saw five individual gloves?

8 A Yes.

9 Q Were any of those gloves separately marked?

10 A No, they were the one working pair, the brown
11 one and the two green ones.

12 Q Will you tell us where the two green ones were
13 recovered?

14 A I don't know. They were all given to us by
15 the police officers that were found either in the cell or
16 in Mr. DiGiovanni's pocket.

17 Q So you still had five pairs of gloves?

18 THE COURT: No.

19 Q Five individual gloves?

20 A Possibly.

21 Q And these other green gloves, were you told
22 where these were recovered?

23 A I don't remember right offhand.

24 Q Isn't it a fact that all of the gloves were
25 recovered in the post office in close proximity to the

1 tools that were recovered?

2 A No, sir.

3 Q Did you ever take any gloves from Mr. DiGiovanni?

4 A I don't remember. Like when I got to the
5 precinct that night, they were in the retaining cell here.
6 Now, myself and my partner went there. I don't remember
7 whether the glove was in the pocket or whether it was on
8 the bench in the cell. It was a brown glove.
9

10 Q One glove?

11 A Yes, sir.

12 MR. PANZER: No questions.

13 MR. WEINBACH: No further questions.

14 THE COURT: Next witness.

15 MR. WEINBACH: The Government rests, your
16 Honor.

17 MR. PANZER: Your Honor, may we have a recess
18 for discussion with our clients? Maybe we can have
19 the luncheon recess now?

20 THE COURT: I have to start a new case at 2:30.

21 MR. PANZER: May we have till 1:30, if it
22 wouldn't be an imposition one way or the other?

23 THE COURT: All right, ladies and gentlemen,
24 go out to lunch and be back at 1:35. Go around the
25 back way. You may leave. Go to lunch and don't

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1

discuss the case.

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(Time noted 12:35)

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THE COURT: Any motions?

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MR. STURIM: Yes, if the Court please, at the conclusion of the People's case, defendant Schmanski respectfully moves with particular reference to Count No. 2, that count be dismissed on the grounds there has been no -- grounds that the conspiratorial agreement entered into between the two individuals who are defendants before this Court.

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12

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There is absolutely no testimony as to any prior agreement or understanding reached by them to carry out any criminal act or activity and the testimony in this case obviously consists of the observation of the police officer at the time he responded to this location. Nothing related to anything that proceeded the activity that the officer testified he observed and saw.

19

20

MR. PANZER: Same motion with respect to the defendant DiGiovanni.

21

22

23

24

THE COURT: Denied. There is ample evidence of a conspiracy here. There is ample evidence of planning and a coordinated attempt which is sufficient to constitute evidence of conspiracy.

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MR. PANZER: Your Honor, with respect to

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Count 1, I move to dismiss as to Count 1 on the
trounds there is no evidence linking the defendant
DiGiovanni with any of the depravations or break-ins
in the post office.

MR. STURIM: Same application as to defendant
Schmanski.

THE COURT: Denied. There is more than ample
evidence to connect these defendants to the crime.
You want to put on any proof?

MR. PANZER: I may, your Honor. That's the
reason I asked for the --

THE COURT: I have another case I am scheduling
to start this afternoon.

MR. PANZER: I promise you it will start. Even
if we put on proof, it wouldn't be that much.

THE COURT: 2:25.

MR. PANZER: 2:25?

THE COURT: 2:25.

Gentlemen, I have prepared the charge. If
you pick it up at 2:00 o'clock it will be Xeroxed so
each of you could get a copy.

MR. WEINBACH: I have prepared one request
to charge but your charge may have obviated the
need.

THE COURT: Pick it up at 2:00 o'clock and

THE CLERK: Government's request to charge, marked Court Exhibit 1. Court's proposed charge, marked as Court Exhibit 2.

THE COURT: Yes, gentlemen. What's your wish?

MR. PANZER: Your Honor, defendant DiGiovanni has no request to charge.

THE COURT: With respect to the defendant Otto Schmanski, I may indicate for the record, he rests. He makes one additional request to charge and that is referring to the sidebar at the commencement of the selection of the jury. That is, we would like the jury to be charged that with respect to the evidence in this case, it consists in large measure of circumstantial evidence.

There is no direct evidence that these individuals broke into the premises. There is no evidence in the premises or in the possession of any of the proceeds. The only evidence here is testimony of a problematical sort of the officers seeing them leaving, who responded ten to fifteen minutes after the original alarm had been turned in.

We respectfully submit as this evidence being of a circumstantial nature, this jury must be instructed that it must exclude to a moral certainty

101

1 every hypothethis with respect to the defendant's
2 guilt. The jury must be instructed that it is
3 distinguishable from direct evidence and we would
4 so request a charge with respect thereto.

5 THE COURT: Denied.

6 Both defendants rest?

7 MR. PANZER: Defendant DiGiovanni rests.

8 MR. WEINBACH: Your Honor, there is just one
9 measure before they actually rest. Before Agent
10 Cole's testimony, you may recall testimony of other
11 gloves that he found. The Government would like
12 to put both defendants on notice that the Government
13 does possess two other gloves that were turned over
14 by Inspector Cole and we will make them available
15 to the defendants at this time, in addition to which
16 I would like the record to note that I have turned
17 over one request to charge.

18 THE COURT: What did you want to do? Admit
19 these gloves?

20 MR. WEINBACH: Whatever defendants want to
21 do with them. The Government had no intention of
22 offering them.

23 THE COURT: What do you want to do?

24 MR. STURIM: If the Court please, we would
25 want to have this introduced into evidence, that

102 1

these weren't gloves that were recovered by the officers.

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THE COURT: Where did they recover them, on the premises?

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MR. WEINBACH: Inspector Cole could testify to that. I think he did testify to that.

6

7

THE COURT: Is that satisfactory?

8

MR. PANZER: Satisfactory to me, Judge.

9

THE COURT: All right. Mark it Government, whatever it is.

10

11

This will be introduced in front of the jury, stipulated that they were found on the scene by the police. How many gloves are there?

12

13

14

MR. WEINBACH: Two.

15

THE COURT: Where is the fifth glove?

16

MR. WEINBACH: Judge, I don't know. These are what I have.

17

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THE COURT: What happened to the brown glove? We had two brown gloves in evidence. Where was the brown glove found, in Mr. DiGiovanni's pocket?

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21

MR. WEINBACH: One. That is what we have.

22

One other thing. I would ask now to call another witness with respect to prior similar acts. He is a police officer who would testify that in February of this year, three months before the

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24

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1 THE CLERK: Two gloves marked as Government
2 Exhibit 36 in evidence.

3 THE COURT: Mr. DiGiovanni, I want you to be
4 quiet through the rest of the case. I have noticed
5 you acting noisily at the table and throwing your arms
6 around. Calm down please. The jury notes these
7 things. It won't do any good.

8 Bring in the jury.

9 (time noted 2:44)

10 THE COURT: You have heard all evidence laid out
11 and gentlemen and it has all been introduced with
12 one exception. There are these two gloves that are in
13 this envelope which were found after the defendants
14 were apprehended within the post office; is that
15 clear? Show them to the jury please, Mr. Sacco.
16 Otherwise, you have all of the other evidence. You
17 can get any of the evidence that has been introduced
18 and take it into the jury room during the deliberations.
19 Thank you, Mr. Sacco.

20 Ladies and gentlemen, you will now hear the
21 summations. These are designed to assist you in
22 reasoning and coming to a sensible conclusion with
23 respect to the matter that we have heard. Listen
24 very closely to the attorneys.

25 They are not giving evidence but they will

Jury Charge

2
3 THE COURT: Ladies and gentlemen, it is you
4 who have to decide the facts. I have nothing to do
5 with that. The attorneys have exhausted their role
6 in this connection. I have no view of the guilt or
7 innocence of these defendants and nothing that I have
8 said or done should lead you to believe I have any
9 view. My sole function here, my sole desire is to
10 see that you fairly try this case in accordance with
11 the laws as I will explain them to you and the
12 evidence as you have heard and seen it. The fact
13 there was a prosecution brought in the name of the
14 United States does not entitle the Government to any
15 greater consideration than any other litigants. All
16 parties are entitled to the same weight given in your
17 deliberations. Everybody here is equal and the
18 Government does have the burden of proof, as I will
19 explain it to you. Nobody is entitled to sympathy.
20 Nobody is entitled to any favor. The fact that there
21 was an indictment is entitled to no weight. It's just
22 a way of bringing the case into Court. It is no
23 evidence of guilt. Each of these defendants has
24 pleaded not guilty. That means the Government has
25 the burden of proof, beyond a reasonable doubt, with
respect to each element of each of the two offenses

that are charged.

In effect, we have four trials here and each one of them has to be separately considered by you. Two charges as against each of these defendants or four in whole. The defendant doesn't have to submit any evidence at all. The defendant doesn't have to take the witness stand. You may draw no inference adverse to a defendant because he doesn't take the witness stand. Is that clear to you?

(Pause.)

The presumption of innocence remains with each defendant right through your deliberations. Reasonable doubt means a doubt which will cause a reasonable person, a prudent person, to hesitate to act in the most important of his or her own affairs in light. Finding a person to be guilty of a serious crime charged is very important and you will consider that in determining whether or not you have a reasonable doubt. That doubt may result from the evidence or from the failure to produce evidence. Each one of these defendants is entitled to be separately considered.

The fact that they were found together, if they were so found, doesn't necessarily mean that

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they were associated. You have to determine that.

Now, there are two crimes, as I have indicated. The first one I will read to you now charges that on or about the 2nd day of May 1976, within the Eastern District of New York, the defendants Otto Schmanski and Peter DiGiovanni, did knowingly and unlawfully and forcibly break into the United States Post Office Branch at Eltingville, 4455 Amboy Road, Staten Island, New York, with intent to commit in such Post Office Branch a larceny or other depredation. That is a charge violating Section 2115 of Title 18 of the United States Code which reads as follows: "Whoever forcibly breaks into or attempts to break into any Post Office, or any building used in whole or in part as a Post Office, with the intent to commit in such Post Office, or building or part thereof, so used, any larceny or other depredation shall be guilty of a crime."

The Government has to prove beyond a reasonable doubt two elements. The first, that the defendant or one of them broke into or attempted to break into the United States Post Office, and, second, that he did it with the intent to commit a larceny or some other depredation. It is not necessary that each

of the defendants break into the Post Office. If one of them broke into it and the other one was aiding, that's sufficient to make the one who didn't break in guilty as a principal and that is because there is a section of the law I will read to you now.

"Section 2 of Title 18, provides that whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In order to find aiding or abetting, it is necessary to find that a defendant willfully associated himself in some way with the criminal venture charged and that he willfully participated in it as he would something he wished to bring about.

So, if you want to find out if the defendant aided or abetted, you must ask yourselves such questions as: Did he willfully or knowingly associate himself with this criminal venture, if you find it was one, to break into a Post Office to commit a larceny or to take some of the objects?

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2 Did he participate in it as something he wanted to
3 make succeed? If he did, he is an aider or an abettor.
4 So much for one.

5 Count two, a conspiracy is charged that
6 these defendants conspired, either together or with
7 someone else, to commit a burglary. It reads as
8 follows: "On or about the 2nd day of May 1976, within
9 the Eastern District of New York, the defendants
10 Otto Schmanski and Peter DiGiovanni, together with
11 another person unknown to the Grand Jury, did knowingly
12 and unlawfully conspire to commit an offense against
13 the United States by knowingly and unlawfully conspir-
14 ing to forcibly break into the United States Post
15 Office Branch at Eltingville, 4455 Amboy Road, Staten
16 Island, New York, with intent to commit in such Post
17 Office Branch a larceny or other depredation in
18 violation of Title 18, United States Code, Section
19 2115."

20 It would be a violation of Section 371
21 of Title 18 of the United States Code which reads as
22 follows: "If two or more persons conspire to commit
23 any offense against the United States, and one or
24 more such persons do any act to effect the object of
25 the conspiracy, each shall be guilty of a crime."

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2 So, you have to find four things. First,
3 and each beyond a reasonable doubt, that there were
4 two or more persons involved. A person can't enter
5 into a conspiracy with themselves, obviously. Second,
6 that they willfully and knowingly conspired or agreed,
7 Third, that they conspired to do unlawful acts and,
8 fourth, that one of the members of the conspiracy did
9 an act to effect the object of the conspiracy.

10 A conspiracy is a combination of two
11 or more people to accomplish an unlawful purpose. It
12 is not necessary that the persons charged entered into
13 any express or formal agreement, which they stated
14 orally or in writing how they will proceed. It is
15 sufficient that it showed they came to an understand-
16 ing to accomplish an unlawful act. The common design
17 is the essence of this charge. The agreement may be
18 inferred from the circumstances and conduct of the
19 parties, as you found them or as you will find them.
20 It is not necessary for the Government to show that
21 there was any physical contact during the course of
22 the activities charged here but mere innocent
23 association is not enough to constitute the basis for
24 such a charge. It's not necessary that each of the
25 conspirators participated in all aspects of the

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activities. If one of them had one function and another another function, that is sufficient. It has to be willful and knowing and an act is willful if the defendant acts knowingly and voluntarily and intentionally with the intention to do the bad act charged here, to break into this Post Office. If you find that is what happened, the bad purpose would be to conspire to break into the United States Post Office with the intent to take something.

The third element that the Government must prove is that the conspiracy was to do an unlawful act. I already charged you with an unlawful act in connection with charge one.

The final element is that something physical had to be done. It's not a crime to merely agree to do an unlawful thing. You have to actually go out and begin to do something in our country. Here it is charged, of course, what was done, one of them Mr. Schmanski actually broke in. It wouldn't make any difference whether it was two of them or three of them that broke in, as long as one of them committed this overt act.

You will have to consider the credibility of the witnesses and weigh their testimony, their

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bias, as you have observed it, the interest in and the outcome of the case, the candor and demeanor, the relationship that the witness may have had with the prosecution. If you believe a witness has willfully sworn to you falsely, you can ignore the witness' testimony but he may be mistaken in part and accurate as to other parts. Questions of identification should be considered carefully. Consider the lighting at the time, the position of the parties, whether they could see what they saw, whether they were trained observers and if they had goodsight and the like.

I have no view, again, on their credibility. That's entirely for you to decide. If you have any question about what was said here, we have it all in this machine but it's difficult to get out so if you don't need it, don't ask for it. But if you do want specific testimony re-read, we will try to find it. Try to be as specific as you can because it means going through these pages. It's not typed. If you want any or all of the exhibits, just send in a note and we will be happy to send them all in. If you want any more help with the law, send in a note and I will try to be more helpful to you. If you want any sustenance or anything to make you more

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2 comfortable, we will try to get it for you. If you
3 have any calls to be made at home, don't hesitate to
4 ask and we will try to help you if we can.

5 Any verdict must be unanimous. You are
6 each individually responsible for your own verdict.
7 I want you to listen carefully and politely to each
8 other and discuss the matter. When you have reached
9 a verdict as to either of the defendants, as to either
10 of the counts, as to all of them, whichever you prefer,
11 send in a note and we will take it.

12 Do counsel wish to see me at the sidebar?

13 MR. PANZER: Yes.

14 (Thereby, sidebar discussion was commenced.)

15 MR. PANZER: Your Honor charged that presump-
16 tion of innocence remains with the defendant through-
17 out the trial. I believe your Honor neglected to
18 charge -- And must be considered by you in your
19 deliberations. (Directed to the jury.)

20 THE COURT: Consider the presumption of
21 innocence in your deliberations.

22 (Continuing sidebar discussion.)

23 THE COURT: Anything else?

24 MR. STURIM: I would still press the instruction
25 to the jury on circumstantial evidence.

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THE COURT: That is not Federal Law. It's State Law.

MR. WEINBACH: I have nothing, your Honor.

(Thereby, the sidebar discussion terminated.)

THE COURT: Retire please and consider your verdict. The Clerk reminded me that the Marshals haven't been sworn. Swear the Marshals, please.

(Thereby, the Marshals were duly sworn by the Clerk of the Court.)

THE COURT: Consider your verdict please.

(Time noted 3:35 P.M.)

THE COURT: You can sit down for a moment, please, Mr. Boyle. Come over to the sidebar.

(Thereby, sidebar discussion was commenced.)

Do you have all the pictures?

MR. PANZER: It says photographs.

THE CLERK: One clarification.

THE COURT: Give them the photographs and the clothes and the gloves. Let me have those photographs please; Government's Exhibits 35, 28, 29, 18, 12, 11, 14, 13, 15, 17, 16, 31, 32, 30; globes marked Government's Exhibit 9; Gloves marked Exhibit 36; Clothing which is marked Government's Exhibit 10 and clothing which is marked Government's

Exhibit 19.

MR. WEINBACH: Your Honor, maybe the jury should be instructed that these bags are sealed and there is no reason why they can't open them if they want to.

THE COURT: Thank you, gentlemen.

(Time noted 3:37 P.M.)

THE COURT: We have a note from the Jury. They want the testimony of Officer Seaton-Harris.

(Time noted 4:45 P.M.)

THE COURT: The reporter is ready to read back the portions. Please stop him when you have had enough.

(Thereby, the Court Reporter read back the abovementioned testimony. Time noted 5:30, completed at time noted 5:40.)

THE CLERK: Note marked Court Exhibit 4. Jurors' note, phone calls, marked as Court Exhibit 5.

(Time noted 5:42.)

THE CLERK: Received a note from the Jury, marked Court Exhibit 6; Jurors' note indicating verdict, marked as Court Exhibit 6.

(Time noted 5:45.)

THE COURT: All right, bring in the Jury.

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MR. PANZER: Your Honor, may I reserve my motions until the date of sentence?

THE COURT: What motions are you going to make?

MR. PANZER: Motion for judgment of acquittal.

THE COURT: No, denied.

MR. STURIM: May I make a motion on behalf of the defendant Otto Schmanski, for a directed verdict of acquittal to set aside the verdict of the Jury as against the weight of evidence contrary to law?

THE COURT: Denied.

MR. STURIM: Respectfully except.

MR. PANZER: Of course, I make the same motion with respect to Mr. DiGiovanni.

THE COURT: Denied. All right, we will begin the pre-sentence report tomorrow. Is there any reason for not continuing the present bail?

MR. WEINBACH: No, your Honor.

THE COURT: Please keep reporting in, gentlemen. Please let your attorneys know where you are. If you cannot be found, you will be in more trouble than you are already in. Let them report to probation tomorrow and begin the pre-sentence preparations.

MR. PANZER: Yes, your Honor.

THE COURT: All right, good night everybody.

MR. WEINBACH: Your Honor, on the record. I

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